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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON AT SEATTLE
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10 ALVIN GREENBERG, MICHAEL STEINBERG,
11 JULIE HANSON, CHRISTINA KING, and
12 RONNELL ROBERTSON, on behalf of themselves
and all others similarly situated,

13 Plaintiffs,

14 v.

15 AMAZON.COM, INC., a Delaware corporation,

16 Defendant.
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Case No. 2:21-cv-00898-RSL

SECOND AMENDED CLASS ACTION
COMPLAINT

JURY TRIAL DEMANDED

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For their Second Amended Class Action Complaint against Defendant Amazon.com, Inc. (“Amazon”), Plaintiffs Alvin Greenberg, Michael Steinberg, Julie Hanson, Christina King, and Ronnell Robertson, on their own behalf and on behalf of all others similarly situated, allege as follows:

I. INTRODUCTION

1. With this action, Plaintiffs seek to hold Amazon accountable for its unlawful price gouging during the COVID-19 pandemic. As Amazon announced on its website on March 23, 2020, “Price gouging has no place in our stores.”¹ And as the Washington Supreme Court held on August 8, 2024, price gouging is not allowed under Washington’s Consumer Protection Laws.² This lawsuit seeks to hold Amazon accountable for price gouging.

2. Throughout the pandemic, consumers turned increasingly to online retailers, and Amazon in particular, to fulfill their essential needs. With medical experts warning about the ease of infection in public settings, and “stay home” orders prevailing in most parts of the country, consumers recognized during the pandemic that retail excursions can have perilous consequences for themselves or loved ones, no matter what precautions are taken. In that moment, Amazon’s services were essential. Without venturing into public and risking exposure, and under emergency stay-at-home orders, and with just a few clicks, Americans could purchase a wide range of consumer goods from Amazon that would be delivered directly to their homes.

3. Amazon’s sales have never been higher, and since the COVID-19 pandemic began, its sales in some categories (*e.g.*, home items) increased ***more than 1,000 percent***.³ Correspondingly, Amazon’s profits have skyrocketed. Jeff Bezos’s personal wealth increased by \$75 billion (or approximately \$205 million per day) in 2020.⁴

¹ Amazon, “Price gouging has no place in our stores,” ABOUTAMAZON.COM (Mar. 23, 2020), <https://www.aboutamazon.com/news/company-news/price-gouging-has-no-place-in-our-stores>.

² *Greenburg v. Amazon.com Inc.*, No. 101858-4 (Wash. Sup. Ct. Aug. 8, 2024).

³ See Dana Mattioli & Sebastien Herrera, *Amazon Struggles to Find Its Coronavirus Footing. ‘It’s a Time of Great Stress.’*, WALL STREET J. (Mar. 31, 2020), <https://www.wsj.com/articles/amazon-struggles-to-find-its-coronavirus-footing-its-a-time-of-great-stress-11585664987>.

⁴ See Kate Taylor, *A chart shows how Jeff Bezos’s net worth exploded by \$75 billion in 2020, reaching \$188 billion before he stepped down as Amazon’s CEO*, BUS. INSIDER (Feb. 2, 2021),

4. While Amazon provided needed services during the pandemic, this does not place it above the law. Like every seller, Amazon has a legal obligation under Washington (and other) laws to ensure that its pricing does not exploit consumers facing emergency conditions. That is, price gouging is not just immoral, it is a manifest violation of the Washington Consumer Protection Act (“WCPA”).

5. To be sure, there is some price fluctuation in any dynamic market. This, however, is not a case about ordinary price fluctuation. It is about Amazon leveraging a pandemic to profit unfairly off consumers in real need. Available data show that Amazon’s price increases have been anything but normal. Just by way of example, after COVID-19 was declared a nationwide public health emergency by the United States Department of Health and Human Services (“HHS”),⁵ certain Amazon prices increased as follows:

- **Face Masks:** Increases up to *1,800 percent*, from \$4.21 to \$79.99;
- **Cold Remedies:** Increases up to *1,523 percent*, from \$4.65 to \$79.00;
- **Toilet Paper:** Increases up to *1,044 percent*, from \$17.48 to \$200;
- **Pain Reliever:** Increases up to *233 percent*, from \$18.75 to \$62.40;
- **Black Beans:** Increases up to *521 percent*, from \$3.54 to \$21.99;
- **Baking Soda:** Increases of more than *1,500 percent*, from \$3.08 to \$50.00;
- **Flour:** Increases up to *400 percent*, from \$22.00 to \$110.00;
- **Yeast:** Increases up to *625 percent*, from \$7.02 to \$50.95; and
- **Disinfectant Wipes:** Increases of more than *745 percent*, from \$20.71 to \$174.96.

6. All of these (and many more) Amazon price increases are flagrantly unlawful under Washington law. While the WCPA does not codify a specific threshold for price gouging, many states with comparable consumer-protection regimes set the bar at 10%. *See, e.g.*, Cal. Penal Code § 396(b), Ark. Code § 4-88-303(a), W. Va. Code §46A-6J-3. Others set it at 15%. *See, e.g.*, Or. Admin R. 401.965(3). Others bar *any* price increase during a declared emergency. *See* Haw. Rev. Stat. Ann

<https://www.businessinsider.com/amazon-ceo-jeff-bezos-net-worth-explodes-in-2020-chart-2020-12>.

⁵ *See* HHS, *Determination that a Public Health Emergency Exists* (dated Jan. 31, 2020, eff. Jan 27, 2020), available at <https://aspr.hhs.gov/legal/PHE/Pages/2019-nCoV.aspx>.

§ 127A-30(a)(1). A bill being once considered by Washington’s legislature would render unlawful prices increases of 15% or more during a declared emergency.⁶

7. The Washington Attorney General has recognized that charging excessive prices during the COVID-19 pandemic “is a violation of the Consumer Protection Act, RCW 19.86.020” as it currently exists.⁷ Invoking the WCPA, the Washington Attorney General has issued numerous cease-and-desist letters barring “price gouging during this emergency.”⁸ Whether or not further price gouging legislation is enacted, courts likewise have an obligation to enforce the plain terms of the WCPA, including its freestanding prohibition on “unfair” acts or practices. And price gouging to profit off a pandemic is about as “unfair” as a business practice can get.

8. Prior to this action, Amazon has acknowledged price gouging on its platform during the pandemic, but it has deflected responsibility by blaming third-party suppliers who use Amazon to market their goods. Indeed, Amazon knew how to identify price gouging and represented to its customers that “we have dynamic, automated systems in place that locate and remove unfairly priced items” and that Amazon had removed “well over half a million of offers from our stores due to coronavirus-based price gouging.” This public relations campaign surfaced two important facts. *First*, when a third party markets a product on Amazon, Amazon controls virtually every aspect of the sale, ***including the price ceiling***, and can identify price gouging and stop it. Further, when Amazon sells products supplied by third parties at excessive prices, Amazon is responsible. *Second*, and most brazenly, Amazon inflated prices on its own inventory of products throughout the pandemic. These are products Amazon supplies and sells directly to consumers. For example, a study by the Public Interest Research Group (“PIRG”) shows that, in February 2020, Amazon had increased prices on its own inventory by more than 50 percent on one-sixth of public health products used to combat COVID-

⁶ See SB 5191, 67th Leg., Reg. Sess. (Wash. 2021), text and status available at <https://app.leg.wa.gov/billsummary?BillNumber=5191&Year=2021> (last visited Sept. 19, 2024).

⁷ See Bob Ferguson, Wash. Att’y Gen., Notices to Cease and Desist (Mar. 26, 2020), https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/DemandLetters032620.pdf; see also *Greenberg v. Amazon*, Case No. 101858-4 (Wa. Sup. Ct.), Brief of Amicus Curiae Attorney General of the State of Washington (Dec. 4, 2023).

⁸ See *id.*

19.⁹ Later in September 2020, Public Citizen tracked Amazon pricing on 10 essential products that Amazon markets directly (e.g. masks, toilet paper, disinfectant, etc.) and identified markups from 48% to 1,010%.¹⁰ In short, while claiming to combat third-party price gouging, Amazon has jacked prices on its own inventory of products to profiteer off consumers in desperate need.

9. To safely obtain essential goods during the COVID-19 crisis, Plaintiffs Alvin Greenberg, Michael Steinberg, Julie Hanson, Christina King, and Ronnell Robertson purchased items from Amazon at excessive and unfair prices that vastly exceeded the prices prevailing before the pandemic—increases ranging from 53% to 826%. Amazon profited unlawfully from these sales and Plaintiffs were harmed commensurately. On behalf of themselves, and a proposed Class of consumers similarly situated, Plaintiffs seek damages, restitution, injunctive relief, and all other available remedies.

II. JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction because this is a class action arising under the Class Action Fairness Act of 2005 (“CAFA”), which confers original jurisdiction on the federal courts for any class action in which any member of the Class is a citizen of a state different from any defendant, and in which the matter in controversy exceeds in the aggregate \$5,000,000, exclusive of interest and costs. Plaintiffs allege that the total claims of individual class members in this action are in excess of \$5,000,000, as required by 28 U.S.C. § 1332(d)(2) & (6). Plaintiffs are citizens of California, whereas Defendant is a citizen of Washington, satisfying 28 U.S.C. § 1332(d)(2)(A). Furthermore, the total number of class members is greater than 100, as required by 28 U.S.C. § 1332(d)(5)(B). Federal subject matter jurisdiction thus exists.

11. Amazon has minimum contacts with the United States, this judicial district, and Washington. Amazon maintains its headquarters in Washington and has intentionally availed itself of

⁹ See U.S. Pub. Interest Research Grp. Ed. Fund, *Analysis: Coronavirus spike most surgical mask, sanitizer prices at least 50% on Amazon* (last updated July 28, 2020), <https://uspigredfund.org/resources/usf/analysis-coronavirus-spike-most-surgical-mask-sanitizer-prices-least-50-amazon>.

¹⁰ Public Citizen, *Prime Gouging: How Amazon Raised Prices to Profit from the Pandemic* at 12 (Sept. 2020), available at <https://www.citizen.org/wp-content/uploads/Prime-Gouging-report.pdf>.

1 the laws of Washington by conducting a substantial amount of business in the state. This Court
2 accordingly has personal jurisdiction over Amazon.

3 12. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b)(1) because
4 Amazon is headquartered and resides in this District. Venue is further appropriate in this district
5 pursuant to the forum selection clause in Amazon’s online “conditions of use,” which are available
6 when a consumer signs up for an Amazon account and makes purchases. The conditions provide that
7 “[a]ny dispute or claim relating in any way to your use of any Amazon Service will be adjudicated in
8 the state or Federal courts in King County, Washington, and you consent to exclusive jurisdiction and
9 venue in these courts.”

10 III. PARTIES

11 A. Plaintiffs

12 1. Alvin Greenberg, Ph.D.

13 13. Plaintiff Alvin Greenberg, Ph.D., is 74 years old and resides in San Rafael, California.
14 San Rafael is in Marin County.

15 14. Dr. Greenberg is a toxicologist. He served previously as Chair of the Bay Area Air
16 Quality Management District Hearing Board, a Member of the California Occupational Health and
17 Safety Standards Board (appointed by the governor), and Assistant Deputy Chief for Health, Cal-
18 OSHA.

19 15. Following the January 31, 2020 declaration of a national COVID-19 emergency by the
20 HHS, Marin County issued a Shelter-in-Place Order on March 16, 2020.¹¹ Consistent with prevailing
21 guidance from health experts, the order instructed residents such as Dr. Greenberg to “self-isolate in
22 their place of residence to the maximum extent feasible.”¹² Marin County officials implored residents
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25 ¹¹ See Matt Willis, MD, MPH, Health Officer of the Cty. of Marin, *Order of the Cty. Health Officer*
26 *of the Cty. of Marin to Shelter in Place* (Mar. 16, 2020), available at
27 [https://coronavirus.marinhhs.org/sites/default/files/Files/Shelter%20in%20Place/Shelter%20](https://coronavirus.marinhhs.org/sites/default/files/Files/Shelter%20in%20Place/Shelter%20in%20Place%20Order%2016%20March%202020.pdf)
28 [in%20Place%20Order%2016%20March%202020.pdf](https://coronavirus.marinhhs.org/sites/default/files/Files/Shelter%20in%20Place/Shelter%20in%20Place%20Order%2016%20March%202020.pdf).

¹² *Id.*

1 to leave their homes “as infrequently as possible and only for approved activities.”¹³ While
 2 discouraging avoidable excursions, Marin County officials reminded residents that they could still “go
 3 online, purchase items, and have them delivered to [their] home.”¹⁴ This guidance was reiterated by
 4 the California Department of Health, which on March 16, 2020, advised individuals over the age of
 5 65, such as Dr. Greenberg, to “[r]emain at home until further guidance is issued” and to “[c]onsider
 6 on-line ordering for food and other supplies.”¹⁵

7 16. Marin County renewed its Shelter-in-Place Order on March 31, 2020, expanding it to
 8 make social distancing mandatory.¹⁶ The Shelter-in-Place Order was further renewed by subsequent
 9 pronouncements, and California’s statewide shelter-in-place order remained in effect until June 15,
 10 2021.¹⁷

11 17. On or around April 21, 2020, Dr. Greenberg spoke with his girlfriend, Julie Hoemke,
 12 who resides in San Jacinto, California. Ms. Hoemke lives with three of her children and a
 13 granddaughter who, at that time, was six months old. Consistent with guidance from public health
 14 officials, Ms. Hoemke had been regularly disinfecting the surfaces of her home to protect herself and
 15 family from COVID-19. She had been using bleach for this purpose but had run out of her supply. Ms.
 16 Hoemke visited and called multiple retailers in her vicinity—including grocery stores, Home Depot,
 17 Lowes, and Walmart—in hopes of securing a replacement supply of bleach. The retailers, however,
 18 were all sold out of bleach and other disinfectants.

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 20
 21 ¹³ Marin Health & Human Servs., *Frequently Asked Questions*, <https://coronavirus.marinhhs.org/faqs/en> (last visited June 29, 2021) (FAQ: “What can I do to slow the spread of COVID-19”).

22 ¹⁴ *See id.* (FAQ: “Can I still order the things I need online from businesses and have them delivered
 23 to my home?”).

24 ¹⁵ *See* Cal. Dep’t of Pub. Health, *COVID-19 Public Health Guidance: Self-Isolation for Older Adults and Those Who Have Elevated Risk* (Mar. 16, 2020), https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Self_Isolation_Guidance_03.16.20.pdf.

25 ¹⁶ *See* Lisa Santora, MD, MPH, Deputy Health Officer of the Cty. Of Marin, *Order of the Cty. Health Officer of the Cty. Of Marin to Shelter in Place* (Mar. 31, 2020), available at https://coronavirus.marinhhs.org/sites/default/files/2020-03/marin_final-superseding-shelter-in-place-order.pdf.

26 ¹⁷ *See Safely reopening California*, <https://covid19.ca.gov/safely-reopening/> (June 22, 2021 update).

1 18. Hearing this, Dr. Greenberg endeavored to locate bleach that could be shipped to
2 Ms. Hoemke. Dr. Greenberg did not, however, feel safe visiting retail outlets in and around his San
3 Rafael home. COVID-19 was spreading at this time and at 74 years of age, and with asthma,
4 Dr. Greenberg recognized that he was at heightened risk of experiencing complications should he come
5 into contact with the virus. Heeding public health guidance, Dr. Greenberg instead looked online for a
6 supplier of bleach. The only online retailer he could locate with any bleach in stock was Amazon,
7 which on April 21, 2020, was selling three-bottle containers of Clorox Concentrated Germicidal
8 Bleach for \$58.19. From his professional training, Dr. Greenberg was generally aware that bleach is
9 effective in combatting viruses. Dr. Greenberg had also reviewed the CDC's and EPA's websites to
10 confirm as much. The particular Clorox product Dr. Greenberg located on Amazon features a higher
11 concentrate of sodium hypochlorite, the active ingredient that kills viruses.

12 19. Dr. Greenberg recognized immediately that \$58.19 was an exorbitant price for three
13 bottles of Clorox Concentrated Germicidal Bleach. But under the circumstances, he saw no meaningful
14 choice but to purchase it from Amazon. Even if this product could be obtained from stores in his area,
15 and there was no assurance of that given retail scarcity of COVID-combatting products, as indicated
16 by Ms. Hoemke's inability to find bleach at local retailers, Dr. Greenberg did not feel safe venturing
17 into retail outlets, nor would this have been consistent with public health guidance. The only alternative
18 was to wait in hopes that other online retailers would restock the product, but it was unclear when (if
19 ever) this would occur. At the time, Amazon itself purported to only have six boxes of Clorox
20 Concentrated Germicidal Bleach remaining. With COVID-19 spreading rapidly, and the safety of his
21 girlfriend and family imperiled, Dr. Greenberg did not believe that waiting was an option. Dr.
22 Greenberg accordingly purchased the product at the listed price of \$58.19. Dr. Greenberg paid for the
23 bleach out of pocket and has not been reimbursed.

24 20. The price Dr. Greenberg paid for Clorox Germicidal Bleach vastly exceeded the price
25 that prevailed on Amazon prior to the pandemic. On January 31, 2020, when Health and Human
26 Services Secretary Alex M. Azar II declared a nationwide COVID-19 health emergency (effective
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January 27, 2020), the specific product Dr. Greenberg purchased sold on Amazon for **\$21.74**.¹⁸ By April 21, 2020, when Dr. Greenberg made his purchase, the price had jumped to **\$58.19**, which represents a **168%** increase above the January 31, 2020 price.¹⁹



2. Michael Steinberg

21. Plaintiff Michael Steinberg lives in Oakland, California, which is in Alameda County. Following the January 31, 2020 declaration of a national emergency by the HHS, Alameda County declared a State of Emergency on March 1, 2020.

22. To prevent a larger outbreak of COVID-19, on March 16, 2020, Alameda County issued a Shelter-in-Place Order, which instructed its citizens to “self-isolate in their places of residence to the maximize extent feasible.”²⁰ On that same day, similar orders were issued by five surrounding Bay Area counties, as well as the City of Berkeley, with a total population exceeding six million people

¹⁸ See <https://keepa.com/#!/product/1-B06XZJH8XJ> (last visited Oct. 22, 2021). For brevity, links to specific product price-tracking websites are abbreviated to their URLs.

¹⁹ *Id.*

²⁰ Dr. Erica Pan, Interim Health Officer of the Cty. of Alameda, *Order of the County Health Officer to Shelter in Place* (Mar. 16, 2020), <http://www.acgov.org/documents/Final-Order-to-Shelter-In-Place.pdf>.

1 covered by the orders. A California statewide shelter-in-place order remained in effect through June
2 15, 2021.

3 23. While discouraging avoidable excursions, like in Marin County, Alameda County
4 officials informed residents that they could still “go online, purchase items, and have them delivered
5 to [their] home.”²¹ The Alameda County Interim Health Officer has explained that sheltering in place
6 is necessary because of, among other things, “evidence of continued significant community
7 transmission of COVID-19 within the County and throughout the Bay Area,” that “the virus can
8 survive for hours to days on surfaces and be indirectly transmitted between individuals,” “[b]ecause
9 even people without symptoms can transmit the infection, and because evidence shows the infection
10 is easily spread, gatherings and other direct or indirect interpersonal interactions can result in
11 preventable transmission of the virus.”²²

12 24. Consistent with these orders and prevailing guidance from medical experts,
13 Mr. Steinberg limited trips outside the home during the COVID-19 pandemic. He also sought to
14 prepare more meals at home to minimize contact with outside food vendors, which includes making
15 his own bread.

16 25. Although fearful when leaving his home, Mr. Steinberg during the pandemic attempted
17 to purchase yeast, a necessary ingredient for bread, at local grocery stores. But at points during the
18 pandemic, yeast was unavailable or exceedingly difficult to procure. John Heilman, vice president of
19 yeast manufacturing for AB Mauri, makers of Fleischmann’s Yeast, told USA Today that the two to
20 three weeks of dry yeast buffer inventory Fleischmann’s had on hand “was gone almost instantly” after
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25 ²¹ See Alameda Cty. Health Care Servs. Agency, *Alameda County FAQs for Shelter in lace Order* at
26 21 (updated Apr. 29, 2020, eff. May 4, 2020), available at <https://www.albanyca.org/home/showpublisheddocument/44444/637239184942130000> (FAQ: “Can I still order the things I need
27 online and have them delivered to my residence?”).

28 ²² See *id.* at 3, ¶ 9.

1 the beginning of the COVID-19 pandemic, and estimated on April 23, 2020, that it would take
2 approximately one to two months to get store shelves stocked again.²³

3 26. In April 2020, Mr. Steinberg was unable to locate yeast at local grocery stores and
4 looked for supply on the internet. On April 3, 2020, Mr. Steinberg saw a sales listing for a two-pound
5 pouch of Red Star Active Dry Yeast on Amazon for **\$39.97**. He looked online at the website of another
6 large retailer but could not find any yeast for sale.

7 27. Mr. Steinberg was unable to find yeast elsewhere, he understood the government
8 directives to shelter in place, and he recognized the importance of making food at home in the midst
9 of the pandemic. Thus, he felt that he had no meaningful choice but to purchase yeast on Amazon and
10 accept the terms Amazon was offering, and he did so.

11 28. Nonetheless, Mr. Steinberg was still very upset about the price of yeast on Amazon, a
12 basic household staple, and believed that he was being exploited because there was nowhere else to
13 buy it. So, in the week following his April 3, 2020 purchase, he complained to Amazon about the price
14 and the apparent price gouging. He made multiple phone calls, but the calls got him nowhere. It seemed
15 that each Amazon agent he spoke with had no idea what was going on, apart from noting his prior call
16 and concern. They read from what seemed to be a script, which was nonresponsive to anything he was
17 trying to communicate. At some point he was told that the yeast he purchased was not returnable
18 because it is a food product. When Mr. Steinberg complained about the price jump and pointed out
19 that he believed the Amazon website tracks prices, a person he thinks was a supervisor said that he had
20 no access to that information, and that it is up to another department to figure out whether a price is
21 appropriate. Feeling frustrated but out of options, Mr. Steinberg kept the yeast and received no discount
22 or rebate.

23 29. The price Mr. Steinberg paid for Red Star Active Dry Yeast vastly exceeded the price
24 on Amazon prior to the pandemic. On January 31, 2020, when Health and Human Services Secretary
25 Alex M. Azar II declared a nationwide COVID-19 health emergency (effective January 27, 2020), the
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27 ²³ Jessica Guynn & Kelly Tyko, *Dry yeast flew off shelves during coronavirus pantry stocking. Here's*
28 *when you can buy it again*, USA TODAY (updated Apr. 30, 2020), <https://www.usatoday.com/story/money/food/2020/04/23/coronavirus-pantry-baking-yeast-shortage/3004274001/>.

specific product Mr. Steinberg purchased sold on Amazon for **\$7.02**.²⁴ By April 3, 2020, when Mr. Steinberg made his purchase, the price had jumped to **\$39.97**, which represents a **469%** increase over the January 31, 2020 price.²⁵



3. Julie Hanson

30. Plaintiff Julie Hanson lives in Diamond Springs, California, which is in El Dorado County.

31. Following the HHS' January 31, 2020 declaration of a national COVID-19 emergency, El Dorado County issued a Shelter-in-Place directive on March 19, 2020.²⁶ California's

²⁴ See <https://keepa.com/#!/product/1-B005KR0MZG> (last visited Oct. 22, 2021). The price for this product reached as high as \$99.95 during the pandemic.

²⁵ *Id.*

²⁶ See Nancy J. Williams, Public Health Officer, El Dorado Cty. Health & Human Servs. Agency, *Directive of the El Dorado County Public Health Officer Restricting Activities in Response to COVID-19 Outbreak* (Mar. 19, 2020), available at <https://www.edcgov.us/Government/hhsa/Documents/El%20Dorado%20-%20shelter-in-place%20directive%203-19-2020.pdf> (last visited July 1, 2020).

Governor Newsom issued a statewide Shelter-in-Place Order the same day.²⁷ As with the statewide directive, El Dorado County's Order was designed to ensure "that the maximum numbers of people self-isolate in their place of residence to the greatest extent feasible."²⁸ Action was needed, El Dorado County concluded, because of "evidence of increasing occurrence of COVID-19 in the surrounding counties and the State of California."²⁹ Officials warned in particular that individuals with underlying health conditions faced enhanced "risk for serious health complications, including death, from COVID-19."³⁰ El Dorado County's Shelter-in-Place Order came on the heels of statewide guidance from the California Department of Health, which highlighted the "elevated risk" for health-compromised individuals and advised them to "[c]onsider on-line ordering for food and other supplies" to keep themselves and loved ones healthy.³¹

32. Ms. Hanson is 57 years old and suffers from underlying health conditions, some of which heighten the risk she will experience adverse, and potentially fatal, consequences should she come in contact with the novel coronavirus. Ms. Hanson has Parkinson's disease and bronchiectasis, a lung condition that causes coughing due to scarred tissue in the bronchi, or the passages that let air into the lungs. Severe bronchiectasis can lead to respiratory and heart failure. Ms. Hanson was also in a head-on vehicle collision in 2018, which has impaired her mobility.

33. Prior to the outbreak of COVID-19, Ms. Hanson was just beginning to regain mobility sufficient to shop outside her home. But as COVID-19 spread through California in February 2020, Ms. Hanson decided, particularly in light of her health conditions, that it was not safe for her to make retail excursions. This decision comported with public health guidance, including subsequent directives issued by El Dorado County and California health officials, regarding the need to self-

²⁷ See Cal. Exec. Order N-33-20 (Mar. 19, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf> (last visited July 1, 2020).

²⁸ See El Dorado Cty., *supra* note 26.

²⁹ See *id.*

³⁰ See *id.*

³¹ See Cal. Dep't of Pub. Health, *supra* note 15.

1 isolate, particularly for persons with underlying health conditions. To meet her daily needs, and to
2 provide for her family, Ms. Hanson turned to Amazon and the home delivery it offers. Since the
3 outbreak of COVID-19, Ms. Hanson has purchased certain items from Amazon for herself, and
4 others for daughters who live in their own residences and receive support from Ms. Hanson.

5 34. On or around April 14, 2020, Ms. Hanson became aware that one of her daughters,
6 Sabrina Gates, had acquired a kitten and was experiencing an outbreak of fleas in her own
7 household. Like her mother, Ms. Gates generally stayed inside her home throughout the COVID-19
8 pandemic to protect herself and particularly her diabetic son.

9 35. Ms. Hanson undertook to locate products that might alleviate her daughter's flea
10 infestation. Ms. Hanson has had many pets in her lifetime and has found flea sprays manufactured by
11 Zodiac to be particularly safe and effective at treating houses for fleas. She was able to find Zodiac
12 Flea & Tick Spray listed on Chewy.com, an online pet-supply retailer, but the product was not
13 available for shipment. Ms. Hanson subsequently found the same product on Amazon and, on April
14 30, 2020, purchased it for the price of \$14.19. Ms. Hanson paid out of pocket and has not been
15 reimbursed. This product was supplied by Amazon itself (not a third-party retailer).

16 36. The price Ms. Hanson paid for Zodiac Flea & Tick Spray vastly exceeded the price on
17 Amazon prior to the pandemic. On January 31, 2020, when the HHS declared a nationwide COVID-
18 19 health emergency (effective January 27, 2020), the specific product Ms. Hanson purchased sold
19 on Amazon for **\$8.99**.³² By April 30, 2020, when Ms. Hanson made her purchase, the price had
20 increased to **\$14.19**, representing a **58%** increase over the January 31, 2020 price.³³

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27 ³² See <https://keepa.com/#!/product/1-Bpara B001OVGJUO> (last visited Oct. 22, 2021).

28 ³³ See *id.*



4. Christina King

37. Plaintiff Christina King lives in Mesa, Arizona. Mesa is in Maricopa County.

38. As COVID-19 spread through Arizona in early 2020, Maricopa County was at the epicenter of the evolving crisis. The first known case of COVID-19 in Arizona was a student at Arizona State University in Maricopa County who had travelled to Wuhan China and was diagnosed upon his return.³⁴ The virus spread rapidly, and with great alarm, through the community in the weeks that followed.

39. On March 11, 2020, Arizona Governor Doug Ducey announced a state of emergency due to the continuing outbreak of COVID-19.³⁵ Less than a week later, on March 17, 2020, Mesa Mayor John Giles declared a state of emergency in Mesa.³⁶ Just two days later, with COVID-19

³⁴ See Arizona Department of Health Services, News Release (Jan. 26, 2020) available at <https://www.azdhs.gov/director/public-information-office/index.php#news-release-012620> (last visited Oct. 22, 2021).

³⁵ See *Declaration of Emergency* (March 11, 2020) available at https://azgovernor.gov/sites/default/files/declaraton_0.pdf (last visited Oct. 22, 2021).

³⁶ See *Proclamation and Declaration of Emergency* (March 17, 2020), available at <https://www.mesaaz.gov/home/showpublisheddocument/37274/637200547492300000>,

1 spreading exponentially, Mayor Giles closed all recreational, entertainment, sports, and fitness
 2 venues, while also shutting down restaurants and bars to onsite consumption.³⁷ Mayor Giles urged
 3 residents to avoid social gatherings of ten or more people and “to practice social distancing in their
 4 daily lives.”³⁸ Similar guidance was issued in neighboring Maricopa communities, including
 5 Phoenix.

6 40. As with the rest of the country, Maricopa County has experienced a shortage of
 7 essential products during the pandemic, with disruptions in the supply chain and hoarding emptying
 8 retail shelves. The situation became so dire that, on March 19, 2020, Governor Ducey called in the
 9 National Guard to help retail stores restock their shelves, to the extent possible.³⁹ Shortly thereafter,
 10 Governor Ducey closed Arizona schools and, on March 30, 2020, he issued a statewide “stay home”
 11 order in hopes of quelling the transmission of COVID-19.⁴⁰

12 41. The outbreak of COVID-19 posed acute risks to Mrs. King, who has a compromised
 13 immune system due to chemotherapy treatment she completed in January 2020. Mrs. King also
 14 interacts regularly with elderly parents and in-laws who live nearby. From the outset of the
 15 pandemic, Mrs. King has been particularly concerned about contracting and transmitting COVID-19
 16 to these family members, who, given their advanced age, are at heightened risk of experiencing severe
 17 and potentially fatal health effects. Mrs. King’s mother is also immunocompromised as a result of
 18 having lupus.

19
 20 last visited Oct. 22, 2021.

21 ³⁷ See *City of Mesa, Arizona Second Proclamation of the Mayor Under the Declaration of Emergency*
 22 (March 19, 2020) available at
 23 http://www.leagueaz.org/e/covid_19/links/mesa_proclamation_soe_2.pdf (last visited Oct. 22,
 2021).

24 ³⁸ *Id.*

25 ³⁹ See State of Arizona, Department of Emergency and Military Affairs, *Frequently Asked Questions*
 26 *for AZ National Guard COVID-19 Response Task Force Logistics* (March 23, 2020) available at
https://azgovernor.gov/sites/default/files/azngtaskforcelogisticsfaqs_2020-03-23_0.pdf
 (last visited Oct. 22, 2021).

27 ⁴⁰ See Office of the Governor Doug Ducey, *Executive Order: 2020-18* (March 30, 2020) available at
 28 https://azgovernor.gov/sites/default/files/eo_2020-18_stay_home_stay_healthy_stay_connected_1.0.pdf (last visited Oct. 22, 2021).

1 42. Mrs. King has turned increasingly to online retail during the pandemic. She did this to
2 protect herself and family from COVID-19, including the elderly parents and in-laws she needed to
3 help in obtaining essential items. In addition, Mrs. King has been unable to find many of the products
4 she and her family require at brick-and-mortar retail outlets in her vicinity, making online retailers
5 the primary option. Mrs. King's elderly parents and in-laws do not frequently shop online due to
6 concerns about identity theft, and thus Mrs. King purchases and distributes items to them when she
7 can.

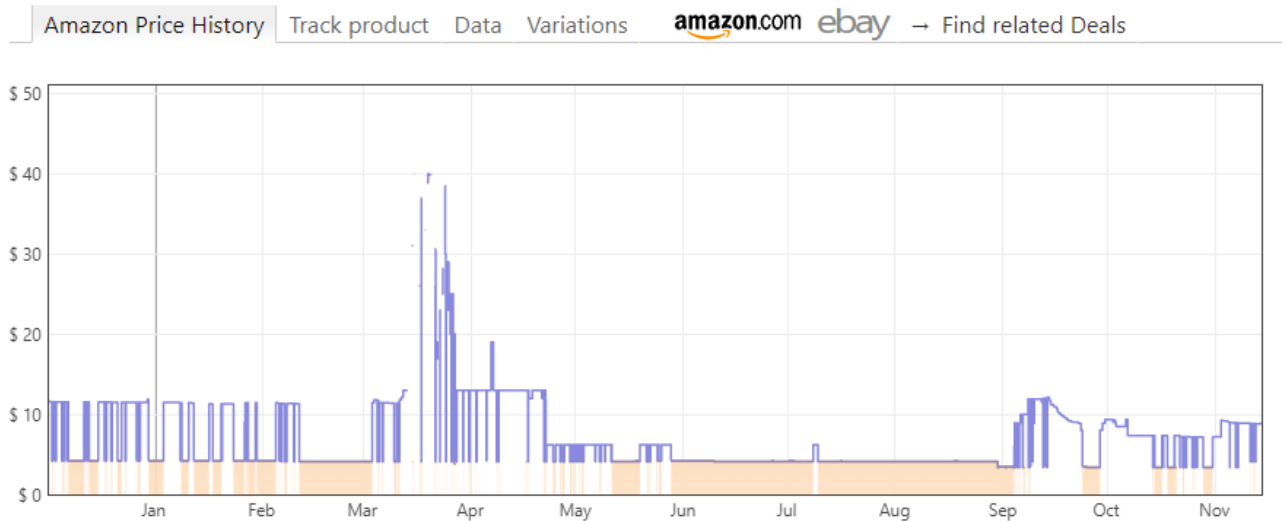
8 43. When Mrs. King shops online she typically compares prices across multiple
9 platforms, including Vitacost, Target, Sprouts, Costco, Amazon, and others. But throughout the
10 pandemic, Mrs. King observed that essential goods were often unavailable on many of these
11 platforms, or were available only for short periods of time before supplies were exhausted. In many
12 instances, Mrs. King found that the products she seeks (including essential items to combat COVID-
13 19) were available only on Amazon.

14 44. Amazon repeatedly price gouged Mrs. King during the pandemic, including on at
15 least the five purchases detailed below.

16 45. Around March 20, 2020, Mrs. King's mother expressed her dismay about the number
17 of products that were out of stock at local stores, including beef ramen noodles. Recognizing that her
18 mother was growing increasingly nervous about product shortages, Mrs. King looked online for an
19 available supply of beef ramen noodles that could be delivered safely to her home. Amazon is not
20 Mrs. King's preferred retailer for food items, but she had difficulty finding this product on other
21 online stores. Eventually, Mrs. King found a 12-pack of Marachan beef ramen noodles on Amazon
22 for \$38.89. Mrs. King believed \$38.89 was an inflated price, and this was not the exact product Mrs.
23 King's mother preferred. But having been unable to find ramen noodles anywhere else, Mrs. King
24 had no alternative to Amazon and made the purchase. Mrs. King paid out-of-pocket for this item and
25 was not reimbursed.

26 46. The price Mrs. King paid Amazon for a 12-pack of Marachan instant noodles vastly
27 exceeded Amazon's price prior to the pandemic. On January 31, 2020, when the HHS declared a
28 nationwide COVID-19 health emergency (effective January 27, 2020), the specific product Mrs.

King purchased sold on Amazon for **\$4.20**. The **\$38.89** price Mrs. King paid on March 20, 2020 represents an **826%** increase over the January 31, 2020 price.⁴¹



47. Also in March 2020, Mrs. King was looking to purchase a supply of rice, a staple for her own family. Like many staples, rice was in short supply at this time. Mrs. King could not locate any rice at her local grocery outlets, so again she checked online. Mrs. King searched several online stores, but they were all sold out of rice. Ultimately, Mrs. King found a four-pack of 32-ounce containers of RiceSelect Jasmati rice on Amazon. This was substantially more rice than Mrs. King wanted to purchase. And Mrs. King believed the price Amazon was charging—\$44.95—was inflated. But given her inability to find rice at grocery outlets or online stores, and given the importance of safely obtaining food staples for her family, Mrs. King did not believe she had a meaningful choice. She purchased the rice on March 20, 2020.

48. The price Mrs. King paid vastly exceeded the price on Amazon prior to the pandemic. On January 31, 2020, when the HHS declared a nationwide COVID-19 health emergency (effective January 27, 2020), the specific product Mrs. King purchased sold on Amazon for **\$20.82**. The **\$44.95** price Mrs. King paid on March 20, 2020, represents an **116%** increase over the January 31, 2020 price.⁴²

⁴¹ See <https://keepa.com/#!/product/1-B003OB69PC> (last visited Oct. 22, 2021).

⁴² See <https://keepa.com/#!/product/1-B000EH4XYS> (last visited Oct. 22, 2021).



49. Mrs. King also experienced great difficulty obtaining hand sanitizer during the pandemic, an essential product that leading public health officials have recommended be used, and used liberally, to stop the spread of COVID-19. Due to the shortage, many people have endeavored to make their own hand sanitizer, and various tutorials have been published on the internet showing how this can be done. Having encountered one of those tutorials, and unable to find hand sanitizer anywhere for purchase, Mrs. King decided to buy the ingredients needed to mix her own.

50. One ingredient used in homemade hand sanitizer is vegetable glycerin, a product that Mrs. King had not recalled seeing at retail stores in her area, or online for that matter. On March 13, 2020, she looked on Amazon and found a 16-ounce bottle of NOW Solutions Vegetable Glycerin selling for \$11.54. This product was supplied by Amazon itself (not a third-party retailer). With her supply of hand sanitizer dwindling, and concerned about the health and safety of her family, Mrs. King purchased the vegetable glycerin from Amazon. Mrs. King saw no reasonable alternative in the circumstances.

51. The price Mrs. King paid for this particular vegetable glycerin product vastly exceeded the price on Amazon prior to the pandemic. On January 31, 2020, when the HHS declared a nationwide COVID-19 health emergency (effective January 27, 2020), the specific product Mrs.

King purchased sold on Amazon for **\$5.79**. The **\$11.54** price Mrs. King paid on March 20, 2020 represents an **99%** increase over the January 31, 2020 price.⁴³



52. Throughout the pandemic, Mrs. King also sought to protect herself and family by using cleaning and disinfectant products on the surfaces of her home. This was consistent with guidance from public health authorities. At various points during the pandemic, however, Mrs. King observed shortages of disinfectants at physical and online stores.

53. Throughout March 2020, Mrs. King was having particular difficulty locating disinfectants, and, specifically, disinfecting wipes. Her parents were having the same difficulty and they collectively agreed that, if anyone found a supply, they would purchase extra to share.

54. Typically, Mrs. King tries to purchase cleaning products from eco-friendly manufacturers, including Seventh Generation. Mrs. King was unable to find any Seventh Generation disinfectants at this time, however. Thus, she broadened her search to look for disinfectants of any type. She found none in physical stores, or at various online stores she recalls searching, including OfficeMax, Staples, Vitacost, and Amazon.

55. After several days of searching, Mrs. King found a supply of Clorox disinfecting wipes that had become available on Amazon—specifically a 2-pack of Clorox Commercial Solutions Disinfecting Wipes that Amazon was selling for \$90. This product was supplied by Amazon itself

⁴³ See <https://keepa.com/#!/product/1-B0019LWU2K> (last visited Oct. 22, 2021).

(not a third-party retailer). Although Clorox is not Mrs. King's brand of choice, and while she believed the price was substantially inflated, Ms. King also recognized that she had no meaningful choice given the scarcity of disinfectants and her inability to buy disinfecting wipes from any other retailer. In these circumstances, and mindful of how critical disinfectants are to combat COVID-19, Mrs. King purchased the Clorox wipes from Amazon.

56. The price Mrs. King paid for these particular Clorox disinfecting wipes grossly exceeded the price on Amazon prior to the pandemic. On January 31, 2020, when the HHS declared a nationwide COVID-19 health emergency (effective January 27, 2020), the specific product Mrs. King purchased sold on Amazon for **\$54.63**. The **\$90.00** price Mrs. King paid on March 20, 2020, represents an **65%** increase over the January 31, 2020 price.⁴⁴

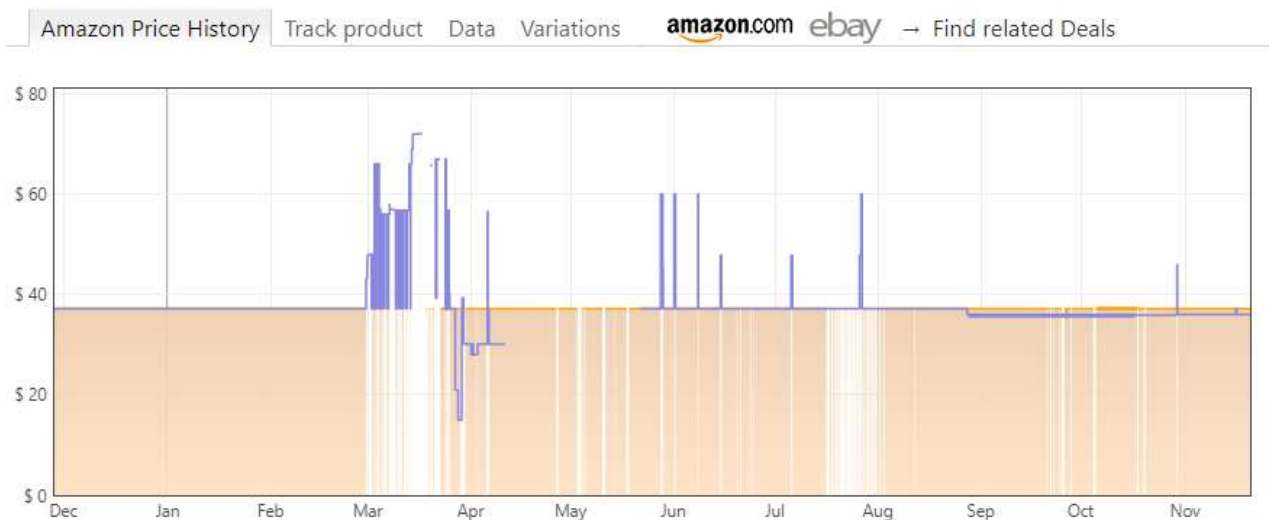


57. Mrs. King was also price gouged on water, an essential item that was particularly essential in her circumstances. Mrs. King's husband has sleep apnea, a condition in which breathing stops during sleep, leading to a host of health complications. One treatment for sleep apnea is use of a continuous positive airway pressure, or "CPAP," machine during sleep. CPAP machines, including the machine used by Mrs. King's husband, require distilled water during operation. Distilled water, however, was difficult to find during the pandemic.

⁴⁴ See <https://keepa.com/#!/product/1-B077ZMMT9D> (last visited Oct. 22, 2021).

58. In March 2020 in particular, Mrs. King was unable to locate any supply of distilled water. She looked both at physical stores, and online, and found none available. The only supply she could locate was a package of 24 bottles of Smartwater distilled water available on Amazon. This was substantially more distilled water than she required for her husband's CPAP machine. The price Amazon was charging—\$56.76—also appeared exceedingly high to Mrs. King. But recognizing that distilled water was not available elsewhere, and having tried for some time to find it, Mrs. King concluded that she had no alternative but to purchase this product from Amazon. Without the water, her husband's CPAP machine could not operate.

59. The price Mrs. King paid for Smartwater distilled water grossly exceeded the price on Amazon prior to the pandemic. On January 31, 2020, when the HHS declared a nationwide COVID-19 health emergency (effective January 27, 2020), the specific product Mrs. King purchased sold on Amazon for **\$37.20**. The **\$56.76** price Mrs. King paid on March 25, 2020 represents a **53%** increase over the January 31, 2020 price.⁴⁵



5. Ronnell Robertson

60. Plaintiff Ronnell Robertson lives in Hickory, North Carolina. Hickory is in Catawba County.

⁴⁵ See <https://keepa.com/#!/product/1-B073WWZ22T> (last visited Oct. 22, 2021).

61. North Carolina reported its first case of COVID-19 on March 3, 2020.⁴⁶ The virus spread rapidly in North Carolina thereafter. On March 10, 2020, governor Roy Cooper declared a state of emergency, instructing, among other things, that employers and employees “use teleworking technologies to the greatest extent possible.”⁴⁷ A week later, governor Cooper closed all restaurants and bars to sit-down service.⁴⁸

62. As the virus spread across North Carolina, Mr. Robertson had difficulty obtaining essential consumer goods, including goods needed to combat the virus and its transmission. Around March 17, 2020, Mr. Robertson sought out a supply of disinfectant wipes that he could use to sanitize surfaces in his home and office. Given the extreme risks posed by COVID-19, Mr. Robertson was particularly interested in obtaining a medical-grade disinfectant. The retail outlets in his area, however, were sold out of all types of disinfectant wipes.

63. Mr. Robertson searched online and, on March 17, 2020, found a supply of CaviWipes on Amazon. This particular product is marketed as a powerful disinfectant for use in medical settings. Recognizing that disinfectants were in scarce supply, and not likely to appear at other retail outlets (online or brick-and-mortar) any time soon, Mr. Robertson purchased eight packages of CaviWipes on Amazon at \$26.99 per package.

64. Although Mr. Robertson recognized that \$26.99 was an inflated price for this product, he did not believe he had any choice given the imminent health risks posed by the spreading coronavirus and his inability to procure a supply of disinfectants elsewhere. To keep himself and his family safe, Mr. Robertson made the purchase.

⁴⁶ See North Carolina Department of Health and Human Services, Press Release (March 3, 2020) available at <https://web.archive.org/web/20200407230739/https://www.ncdhhs.gov/news/press-releases/north-carolina-identifies-first-case-covid-19> (last visited Oct. 22, 2021).

⁴⁷ See Office of Governor Roy Cooper, *Governor Cooper Declares State of Emergency to Respond to Coronavirus COVID-19* (March 10, 2020) available at: <https://governor.nc.gov/news/governor-cooper-declares-state-emergency-respond-coronavirus-covid-19> (last visited Oct. 22, 2021).

⁴⁸ See Office of Governor Roy Cooper, *Governor Cooper Issues Executive Order to Close Sit-Down Service at Restaurants and Bars and Make State Unemployment Benefits More Widely Available* (March 17, 2020) available at: <https://governor.nc.gov/news/governor-cooper-issues-executive-order-close-sit-down-service-restaurants-and-bars-and-make> (last visited Oct. 22, 2021).

65. The price Mr. Robertson paid for CaviWipes vastly exceeded the price on Amazon prior to the pandemic. On January 31, 2020, when the HHS declared a nationwide COVID-19 health emergency (effective January 27, 2020), the specific product Mr. Robertson purchased sold on Amazon for **\$9.99**.⁴⁹ By March 17, 2020, when Mr. Robertson made his purchase, the price had jumped to **\$26.99**, which represents a **170%** increase over the January 31, 2020 price.⁵⁰



B. Defendant

66. Defendant Amazon.com Inc. is a corporation organized and existing under the laws of Delaware, with its principal place of business in Seattle, Washington. Amazon is the world's largest online retailer.

C. History of Fair Pricing

67. From ancient times, societies have imposed a duty on merchants to sell in good faith. The Hebrew culture was the first to prescribe fair dealing as an essential ethical tenant.⁵¹ The Hebrew Talmud, for example, provides that "if thou sell [ought] unto your neighbour, or buyest ought of thy

⁴⁹ See <https://keepa.com/#!/product/1-B0054OCHQW> (last visited Oct. 22, 2021).

⁵⁰ *Id.*

⁵¹ Hon. Sheldon Gardner & Robert Kuehl, *Acquiring on Historical Understanding of Duties to Disclose, Fraud, and Warranties*, 104 COM. L.J. 168, 170 (1999).

neighbour's, hand, ye shall not oppress one another.”⁵² Talmudic scholars interpreted this verse to prohibit overcharges and undercharges,⁵³ and ruled that in any transaction in which the profit exceeded one-sixth, the transaction would be null and void.⁵⁴ Jewish law was skeptical that self-regulating markets could ensure fair prices, and accordingly intervened to adjust prices that, at least in legal terms, it deemed “unfair.”⁵⁵ Aspects of Jewish law, at least those touching on good faith dealing and full disclosure, found their way into Roman law and consequently, into the Civil Code countries of France, Germany, and others.⁵⁶

68. The major Western religious traditions also address the issue of “fair” prices. The Catechism of the Catholic Church prohibits merchants from making pricing decisions that take unfair advantage of those in need.⁵⁷ Essentially the same prohibition found its way into the secular norms of early European markets, where merchants and their customers believed that there was indeed an intrinsically fair price that could be objectively determined.⁵⁸ Market actors believed that, unfair

⁵² *Leviticus* 25:14.

⁵³ Hershey H. Friedman, *Biblical Foundations of Business Ethics*, 3 J. MARKETS & MORALITY 43, 48 (2000).

⁵⁴ *Id.* at 49 (citing the Babylonian Talmud, *Bava Metzia*, 50b). Interestingly, Talmudic scholars seemed to have a relatively sophisticated understanding of the workings of the law of supply and demand, Professor Friedman relates the story of Shmuel, the Talmudic sage, who was concerned with sellers raising the prices of myrtle branches prior to Sukkot. *Id.* He warned the myrtle branch merchants that unless they maintained stable prices, he would allow holiday observers to use myrtle branches with broken tips. *Id.* (citing Babylonian Talmud, *Sukkah*, 34b). Clearly Shmuel understood the role of increased supply as a moderating influence on price.

⁵⁵ MEIR TAMARI, “WITH ALL YOUR POSSESSIONS”: Jewish Ethics and Economic Life 87, 87-88 (1987).

⁵⁶ Saul Litvinoff, *Good Faith*, 71 TUL. L. REV. 1645, 1651-55 (1997).

⁵⁷ Catechism of the Catholic Church, pt. 3, § 2, ch. 2, art. 7, *available at* <https://www.usccb.org/sites/default/files/flipbooks/catechism/580/> (last visited Sept. 19, 2024) (“Even if it does not contradict the provisions of civil law, any form of unjustly taking and keeping the property of others is against the seventh commandment; thus, deliberate retention of goods lent or of objects lost; business fraud; paying unjust wages; forcing up prices by taking advantage of the ignorance or hardship of another.”); *see also Deuteronomy* 25:13-16.

⁵⁸ EDWARD CAHILL, FRAMEWORK OF A CHRISTIAN STATE 43 (1930) (“According to medieval teaching on the other hand, the price of a commodity was supposed to be determined by objective value alone; and could not be justly influenced by the special need or ignorance of buyer or seller.”).

pricing could best be avoided by trading in an open, transparent market.⁵⁹ Similarly, Islamic law prohibits both *Bay' al-mudtarr*, the exploitation of need by, for example, charging an exorbitantly high price,⁶⁰ and *Ihtikar*, which is hoarding, or withholding supplies of essential goods and services with a view to raising prices.⁶¹

69. Not surprisingly, given this deep-rooted history of prohibiting price gouging, price gouging is specifically called out in many state statutes. More than 35 states have dedicated price-gouging laws. Because there is no federal law protecting consumers from price gouging, states provide the only defense from unscrupulous sellers. While statutes and prohibitions vary across the states, they consistently include three facets. First, price increases are generally only prohibited when there is a declared emergency (hurricanes, earthquakes, flooding, or pandemics). Second, price increases are only generally prohibited on a specific set of products that are deemed necessary or essential. Third, the price increase must be due to the presumed increase in demand because of the emergency and not due to some other factor such a regular seasonal price increase or a new supplier.

70. The amount of increase in prices that violate price gouging statutes vary from state to state. Some state price-gouging laws designate a specific percentage increase over which a price increase would be considered gouging. The prohibited percentages range from 10% to 25%. Other state laws use less precise language to describe prohibited price increases such as: “excessive,” “grossly exceeds,” “unreasonable,” “exorbitant,” or “unconscionable.”

71. Price gouging is regulated in Washington by the state’s Consumer Protection Act, which proscribes “unfair” commercial practices. As the Washington Supreme Court recently observed in answering questions certified by this Court, price gouging is generally understood as “a situation

⁵⁹ JEAN FAVIER, *GOLD & SPICES; OF COMMERCE IN TILE MIDDLE AGES* 103 (Caroline Higgitt trans., 1998) “[T]o the medieval mind, price gouging ... [was a] sin of greed, which was to be warded off by trading in an open market, observable by all.”).

⁶⁰ Mohammad Nejatullah Siddiqi, Lecture to the UCLA Int’l Inst., Islamic Banking and Finance (Fall 2001), transcript available at <http://www.isop.ucla.edu/article4.asp?parentid=15056> (last visited Oct. 22, 2021).

⁶¹ MISHKAT, book xii, ch. viii. (“Those who bring grain to a city to sell at a cheap rate are blessed, and they who keep it back in order to sell at a high rate are cursed.”).

1 where a retailer or a supplier takes advantage of increases in demand by charging exorbitant prices for
 2 necessities after a natural disaster or other state emergency.”⁶² The Washington Supreme Court
 3 confirmed that Price gouging can be deemed “unfair” under the CPA and, where the facts are in dispute
 4 or the plaintiff “advances a case-specific unfairness claim that is not regulated by statute or by some
 5 other well-established public policy,” this unfairness determination is to be made by a jury.⁶³

6 IV. FACTUAL ALLEGATIONS

7 A. Outbreak of COVID-19

8 72. In late 2019, an outbreak of respiratory illness resulting from a novel coronavirus was
 9 first identified in Wuhan City, Hubei Province, China. That illness, now known as COVID-19, has
 10 spread across the world. COVID-19 was designated a pandemic by the World Health Organization,
 11 the first pandemic resulting from a coronavirus. As of the date of this Second Amended Complaint,
 12 more than 750 million confirmed cases of COVID-19 have been reported across the globe, and almost
 13 7 million people have died from their illness.⁶⁴

14 73. The first diagnosed case of COVID-19 in the United States was a Washington state
 15 resident who had traveled to Wuhan.⁶⁵ That diagnosis occurred on January 21, 2020. Within days,
 16 there was a second diagnosis in Chicago and another in Orange County.⁶⁶ Alarm spread rapidly within
 17 the public health community and the general population at large. On January 23, 2020, the World
 18 Health Organization confirmed that the coronavirus was being transmitted human-to-human and
 19 recommended that “all countries should be prepared for containment, including active surveillance,
 20
 21

22 ⁶² See *Greenberg v. Amazon*, Case No. 101858-4 (Wa. Sup. Ct.), Op. at 6 (quotation marks omitted).

23 ⁶³ *Id.* at 57.

24 ⁶⁴ See World Health Organization, *Coronavirus (COVID-19) Dashboard*, available at
 25 <https://covid19.who.int/> (last visited August 28, 2021).

26 ⁶⁵ See Alan J. Stein, *First confirmed case of COVID-19 in the United States is diagnosed in*
 27 *Snohomish County on January 20, 2020*, HISTORYLINK.ORG (Apr. 20, 2020),
 28 <https://historylink.org/File/21018>.

⁶⁶ See Stacey Baca et al., *Coronavirus diagnosed in Chicago woman; 2nd case in US*, ABC 7
 CHICAGO (Jan. 24, 2020), <https://abc7chicago.com/coronavirus-chicago-in-ohare/5875738/>.

1 early detection, isolation and case management, contact tracing and prevention.”⁶⁷ The following
 2 week, several cases of human-to-human transmission were confirmed in the United States.

3 74. On January 31, 2020, the HHS declared a public health emergency (effective January
 4 27, 2020).⁶⁸ At the same time, the United States imposed entry restrictions on foreign nationals and
 5 quarantined United States citizens who had been evacuated from Hubei province.⁶⁹ The virus,
 6 however, continued to spread rapidly, with new cases being reported across the country (and world).
 7 Washington state was an early epicenter, with an outbreak occurring at a long-term care center in
 8 Kirkland, Washington.⁷⁰

9 75. Things took a particularly dire turn on February 26, 2020, when health officials
 10 confirmed that a California patient had tested positive for COVID-19 despite having no known
 11 exposure to the virus through travel or contact with an affected individual. This was the first
 12 confirmation that COVID-19 was being transmitted in the United States through “community spread,”
 13 suggesting that untold numbers of citizens were also affected but asymptomatic or otherwise not being
 14 tested for COVID-19.

15 76. On February 29, a Washington man was the first reported COVID-19 death.⁷¹ The virus
 16 continued to spread exponentially. The CDC has reported that during a three-week stretch between
 17 late February and early March 2020, COVID-19 cases in the United States “increased more than 1,000-
 18

19
 20 ⁶⁷ See Kyle Hicks, *3rd US case of new coronavirus confirmed in Orange County, California, officials*
 21 *say*, ABC 7 DENVER (updated Jan. 26, 2020), [https://www.thedenverchannel.com/news/national/](https://www.thedenverchannel.com/news/national/3rd-us-case-of-new-coronavirus-confirmed-in-orange-county-california-officials-say)
 22 [3rd-us-case-of-new-coronavirus-confirmed-in-orange-county-california-officials-say](https://www.thedenverchannel.com/news/national/3rd-us-case-of-new-coronavirus-confirmed-in-orange-county-california-officials-say).

23 ⁶⁸ See Dep’t Health & Human Servs., Press Release, *Secretary Azar Declares Public Health*
 24 *Emergency for United States for 2019 Novel Coronavirus* (Jan. 31, 2020), [https://www.hhs.gov/](https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html)
 25 [about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-](https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html)
 26 [coronavirus.html](https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html) (last visited Oct. 22, 2021).

27 ⁶⁹ See Alex Leary & Brianna Abbott, *U.S. Imposes Entry Restrictions Over Coronavirus*, WALL
 28 STREET J. (updated Jan. 31, 2020), [https://www.wsj.com/articles/u-k-reports-first-coronavirus-](https://www.wsj.com/articles/u-k-reports-first-coronavirus-cases-as-china-allies-limit-ties-11580467046)
 cases-as-china-allies-limit-ties-11580467046.

⁷⁰ See Nicole Acevedo & Minyvonne Burke, *Washington state man becomes first U.S. death from*
coronavirus, NBC NEWS (updated Feb. 29, 2020), [https://www.nbcnews.com/news/us-news/1st-](https://www.nbcnews.com/news/us-news/1st-coronavirus-death-u-s-officials-say-n1145931)
coronavirus-death-u-s-officials-say-n1145931.

⁷¹ *Id.*

fold.”⁷² By March 17, 2020, COVID-19 had been detected in all 50 states⁷³ and 91 people had died from COVID-19 in the United States.⁷⁴ Today, more than 1 million people in the United States have died from COVID-19, and no aspect of American life has gone unchanged.⁷⁵

B. Emergency Declarations and Lockdowns

77. Following the HHS’ January 31, 2020 declaration of a national public health emergency related to COVID-19, state governments issued their own declarations of emergency. The first statewide proclamation was issued by California Governor Gavin Newsom on March 19, 2020.⁷⁶ Declarations in other states followed in rapid succession.

78. Consistent with guidance from public health officials,⁷⁷ state governments typically coupled (or followed) their declarations of emergency with “stay home,” “shelter-in-place,” or other types of lockdown orders requiring residents to remain in their homes to the extent feasible. By April 20, 2020, 45 states had some form of “stay home” order in place, covering approximately 95% of the

⁷² See Anne Schuchat, MD, CDC COVID-19 Response Team, *Public Health Response to the Initiation and Spread of Pandemic COVID-19 in the United States*, February 24–April 21, 2020, 69 MORBIDITY & MORTALITY WEEKLY REP. (May 8, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e2.htm>.

⁷³ See Associated Press, *West Virginia, the last US state without coronavirus, confirms 1st case*, FOX 8 NEWS (updated Mar. 17, 2020), <https://myfox8.com/news/coronavirus/west-virginia-the-last-us-state-without-coronavirus-confirms-1st-case/>.

⁷⁴ See Will Feuer, *US coronavirus cases surpass 5,000, up fivefold from a week ago*, CNBC (updated Mar. 17, 2020), <https://www.cnbc.com/2020/03/17/us-coronavirus-cases-surpass-5000-up-fivefold-from-a-week-ago.html>.

⁷⁵ See CDC, *Covid Data Tracker*, https://covid.cdc.gov/covid-data-tracker/#maps_deaths-total (last visited Sept. 19, 2024).

⁷⁶ See Cal. Exec. Order N-33-20, *supra* note 27.

⁷⁷ See, e.g., Ros Krasny et al., *Fauci says it’s time to ‘hunker down’*, ARKANSAS DEMOCRAT GAZETTE (updated Mar. 16, 2020), <https://www.arkansasonline.com/news/2020/mar/16/fauci-says-it-s-time-to-hunker-down-202/> (National Institute of Allergy and Infectious Diseases (NIAID) director Dr. Fauci instructing Americans to “stay home” during March interviews with major news outlets); Dean Cole & Alison Main, *Top infectious disease expert4 doesn’t rule out supporting temporary national lockdown to combat coronavirus*, CNN (updated Mar. 15, 2020), <https://www.cnn.com/2020/03/15/politics/anthony-fauci-national-lockdown-bars-restaurants-cnntv/index.html> (Dr. Fauci informing the public in March 2020 that he would “like to see a dramatic diminution of the personal interaction that we see”).

1 United States population.⁷⁸ As the NEW YORK TIMES put it, “In a desperate race to stunt the spread of
 2 the coronavirus, millions of Americans have been asked to do what would have been unthinkable only
 3 a few months ago: Don’t go to work, don’t go to school, don’t leave the house at all, unless you have
 4 to.”⁷⁹

5 79. Although the wording differed, state governments across political stripes echoed this
 6 resounding theme:

- 7 • Gov. Eric J. Holcomb (Indiana): “Hoosiers, hunker down.”⁸⁰
- 8 • Gov. Ned Lamont (Connecticut): “At this critical time it is essential that everyone just
 9 stay home.”⁸¹
- 10 • Gov. Brad Little (Idaho): “Our health care and public safety workers are putting
 11 themselves in harm’s way to respond to the coronavirus emergency, and we owe it to
 12 them to do our part by following this statewide stay-home order.”⁸²
- 13 • Gov. Larry Hogan (Maryland): “This is a deadly public health crisis—we are no longer
 14 asking or suggesting that Marylanders stay home, we are directing them to do so.”
- 15 • Gov. Tim Walz (Minnesota): “We are asking you—because it is going to take
 16 cooperation and collaboration—stay home.”⁸³
- 17 • Gov. Bill Lee (Tennessee): “[B]ecause with personal liberty comes great personal
 18 responsibility, all Tennesseans must do their part by staying at home whenever
 19 possible.”⁸⁴

17 ⁷⁸ See Sara Mervosh et al., *See Which States and Cities Have Told Residents to Stay at Home*, N.Y.
 18 TIMES (updated Apr. 20, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>.

19 ⁷⁹ *Id.*

20 ⁸⁰ See IndyStar, *Indiana coronavirus updates: Governor orders Hoosiers to stay at home starting*
 21 *Wednesday* (updated Mar. 24, 2020), <https://www.indystar.com/story/news/health/2020/03/23/indiana-coronavirus-updates-indianapolis-covid-19-latest-news/2896967001/>.

22 ⁸¹ See Gov. Ned Lamont, Press Release, *Governor Lamont Signs Executive Order*
 23 *Asking Connecticut Businesses and Residents: ‘Stay Safe, Stay Home’* (Mar. 20, 2020), see
<https://www.housedems.ct.gov/wood/article/covid-19-update-320>.

24 ⁸² See State of Idaho, *Statewide Stay-Home Order* (updated Mar. 27, 2020), see
 25 <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>.

26 ⁸³ *Stay at home: These states have issued orders for residents not to go out amid COVID-19*
 27 *pandemic*, FOX 10 PHOENIX (updated Apr. 9, 2020), <https://www.fox10phoenix.com/news/stay-at-home-these-states-have-issued-orders-for-residents-not-to-go-out-amid-covid-19-pandemic>.

28 ⁸⁴ See Tenn. Exec. Order No. 22 (Mar. 30, 2020), <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee22.pdf>.

- Gov. Phil Scott (Vermont): “Vermonters are directed to stay at home or in their place of residence, leaving only for essential reasons.”⁸⁵
- Gov. Jay Inslee (Washington): “The more of us who stay home, the fewer of us who will be infected by COVID-19 and the more lives that will be saved.”⁸⁶
- Gov. Chris Sununu (New Hampshire): “We can’t stress this enough – you should stay at your house unless absolutely necessary.”⁸⁷
- Gov. Michelle Lujan Grisham (New Mexico): “This is quite frankly an instruction to stay home.”⁸⁸
- Gov. Kate Brown (Oregon): “Stay Home, Save Lives.”⁸⁹
- Gov. Ralph Northam (Virginia): “Our message to Virginians is clear: stay home.”⁹⁰

80. Although statewide “stay home” orders generally authorized residents to shop outside the home for essential items if necessary, prominent health officials encouraged consumers to shop online to protect themselves and arrest the spread of COVID-19. In this regard, during the pandemic the CDC advised all Americans to “[o]rder food and other items online for home delivery or curbside pickup (if possible)” and to “[o]nly visit the grocery store, or other stores selling household essentials, in person when you absolutely need to,” as “[t]his will limit your potential exposure to others and the

⁸⁵ See VTDigger, ‘Stay home,’ Scott orders; relief measures pass, VT. CMTY. NEWSPAPER GRP. (updated Apr. 2, 2020), https://www.vtcng.com/state_and_world/state_news/stay-home-scott-orders-relief-measures-pass/article_4a53daee-6f74-11ea-9b66-ef84b25aca39.html.

⁸⁶ See Austin Jenkins & Tom Banse, *Washington Gov. Inslee Announces Statewide Stay-At-Home Order*, OPB (Mar. 23, 2020), <https://www.opb.org/news/article/washington-governor-inslee-coronavirus-stay-at-home-order/>.

⁸⁷ See Gov. Chris Sununu (@GovChrisSununu), TWITTER (Mar. 26, 2020, 12:04 PM), <https://twitter.com/govchrissununu/status/1243252555599265792>.

⁸⁸ See Dan McKay (@mckaydan), TWITTER (Mar. 23, 2020, 2:30 PM), <https://twitter.com/mckaydan/status/1242201996028870656>.

⁸⁹ See Or. Exec. Order No. 20-12 (Mar. 23, 2020), https://govsite-assets.s3.amazonaws.com/jkAULYKcSh6DoDF8wBM0_EO%2020-12.pdf.

⁹⁰ See Gov. Ralph S. Northam, Press Release, *Governor Northam Issues Statewide Stay at Home Order* (Mar. 30, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline-855702-en.html>.

1 virus that causes COVID-19.”⁹¹ As for individuals sick with COVID-19, or potentially exposed, the
 2 CDC instructed as follows: “Do not leave your home, except to get medical care. Do not visit public
 3 areas.”⁹²

4 **C. Hoarding and Retail Scarcity**

5 81. The ability to shop outside the home was further curtailed, particularly in the early
 6 stages of the pandemic (but also in subsequent waves), by hoarding and retail scarcity. As COVID-19
 7 spread through the United States, and government efforts to combat the virus intensified, consumers
 8 began to stockpile essential items. By late January 2020, there were already reports that consumers
 9 were buying out retail stock of surgical masks and N95 respirators.⁹³ The research firm Nielsen found
 10 that the sale of medical supplies and rubbing alcohol surged nearly twenty percent after the first
 11 reported case of COVID-19 in the United States on January 30, 2020.⁹⁴

12 82. In February and March 2020, the reports of stockpiling, scarcity, and hoarding
 13 escalated. Nielsen found that sales of medical supplies and rubbing alcohol jumped 65 to 85 percent
 14 after there was a report of person-to-person transmission of COVID-19 on February 29. The firm also
 15 found that powdered milk sales jumped 85 percent, and rice and bean sales increased 25 to 37 percent.⁹⁵
 16 For the week ending on March 7, 2020, compared to the same week a year earlier, sales of hand
 17 sanitizer, aerosol disinfectants, and multipurpose cleaners were 470, 385.3, and 148.2 percent higher,
 18

19
 20 ⁹¹ See Centers for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19): Running*
 21 *Essential Errands* (updated July 30, 2020), [https://stacks.cdc.gov/view/cdc/91347/](https://stacks.cdc.gov/view/cdc/91347/cdc_91347_DS1.pdf)
[cdc_91347_DS1.pdf](https://stacks.cdc.gov/view/cdc/91347/cdc_91347_DS1.pdf) (last visited June 19, 2021).

22 ⁹² See Centers for Disease Control & Prevention, *What to Do If You Are Sick* (updated Mar. 17, 2021),
 23 <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html> (last visited
 Oct. 22, 2021).

24 ⁹³ See Scottie Andrew, *There’s been a run of surgical masks in the US because of the coronavirus*
 25 *scare. You don’t need them, physicians say*, CNN (updated Jan. 28, 2020),
<https://www.cnn.com/2020/01/28/health/coronavirus-us-masks-prevention-trnd/index.html>.

26 ⁹⁴ See Michael Finney & Randall Yip, *Coronavirus impact: Why shoppers are hoarding toilet paper,*
 27 *supplies and groceries*, ABC 7 NEWS (Mar. 18, 2020), [https://abc7news.com/hoarding-buying-](https://abc7news.com/hoarding-buying-frenzy-empty-grocery-shelves-toilet-paper-shortage/6025373/)
[frenzy-empty-grocery-shelves-toilet-paper-shortage/6025373/](https://abc7news.com/hoarding-buying-frenzy-empty-grocery-shelves-toilet-paper-shortage/6025373/).

28 ⁹⁵ *Id.*

1 respectively.⁹⁶ In keeping, on March 18, a news station in the San Francisco Bay Area posted an article
 2 online, “Coronavirus impact: Why shoppers are hoarding toilet paper, supplies and groceries.”⁹⁷ The
 3 article discussed “one of the most visible reaction[s] to the coronavirus – empty shelves at the grocery
 4 stores,” and interviewed a local shopper who had gone to a large grocery store hoping to buy paper
 5 towels and toiletries, but came away with nothing.⁹⁸ The article’s authors interviewed a marketing
 6 professor, Michal Strahilevitz, to explain the hoarding and scarcity: “when something becomes scarce,
 7 everybody wants more of it because they’re afraid next time . . . [t]here won’t be any toilet paper at
 8 all.”⁹⁹

9 83. On March 13, 2020, the NEW YORK TIMES reported that shoppers were “flood[ing]
 10 stores across the nation and emptied shelves, looking to stockpile groceries and household items to
 11 prepare for uncharted territory.”¹⁰⁰ “They grabbed milk and aspirin, paper towels and spaghetti. Cans
 12 of soup and bottles of laundry detergent. Olive oil and sanitizing wipes. With futures suddenly thrust
 13 into the unknown, they did what felt reassuring: panic shop.”¹⁰¹

14 84. A second wave of COVID-19 cases in November 2020 brought a second wave of
 15 hoarding and retail scarcity. On November 17, the NEW YORK POST reported that, “[w]ith COVID-19
 16 cases surging across the US, panic buying is back in vogue — as evidenced by a sea of empty shelves
 17 in supermarkets across the nation in scenes reminiscent of earlier this year, according to reports.”¹⁰²

20 ⁹⁶ See Camila Domonoske & Avie Schneider, *Here’s What’s Been Flying Off Store Shelves*,
 21 NPR (Mar. 16, 2020), <https://www.npr.org/2020/03/16/816404689/spiking-demand-for-sanitizer-canned-goods-leaves-stores-struggling-to-keep-up>.

22 ⁹⁷ See Finney & Yip, *supra* note 94.

23 ⁹⁸ *Id.*

24 ⁹⁹ *Id.*

25 ¹⁰⁰ See Corina Knoll, *Panicked Shoppers Empty Shelves as Coronavirus Anxiety Rises*, N.Y. TIMES
 (Mar. 13, 2020), <https://www.nytimes.com/2020/03/13/nyregion/coronavirus-panic-buying.html>.

26 ¹⁰¹ *Id.*

27 ¹⁰² See Yaron Steinbuch, *COVID-19 panic buying: Toilet paper, essentials fly off shelves again*, N.Y.
 28 POST (updated Nov. 17, 2020), <https://nypost.com/2020/11/17/covid-19-panic-buying-toilet-paper-essentials-fly-off-shelves/>.

D. Consumers Turn Increasingly to Online Purchasing, and Amazon in Particular

85. In response to retail shortages and to limit exposure to the coronavirus, more consumers have been doing their shopping online, increasing consumer demand and reliance on online retailers. According to a Nielsen survey, in mid-March 2020, when the concerns over COVID-19 transmission rapidly escalated, approximately “one-quarter of shoppers said they expected to shop online more frequently—or for the first time—to avoid germs in public places.”¹⁰³ The data confirm that this has occurred. The following graph shows a large increase in March 2020 sales of consumer packaged goods (“CPG”), in store and online as compared to the same month a year prior, with an astonishing 91 percent increase for online sales. In the two weeks ending on March 21, 2020 upwards of 35 percent more people had shopped online for CPG items as compared with a typical week.¹⁰⁴



¹⁰³ See NielsenIQ, *Tracking the unprecedented impact of COVID-19 on U.S. CPG shopping behavior* (Mar. 30, 2020), <https://nielseniq.com/global/en/insights/analysis/2020/tracking-the-unprecedented-impact-of-covid-19-on-u-s-cpg-shopping-behavior/>.

¹⁰⁴ See *id.*

86. Data released by the Commerce Department shows that, overall, United States online “sales hit \$791.70 billion in 2020, up 32.4% from \$598.02 billion in the prior year.”¹⁰⁵ As observers have noted, “[e]commerce thrived in 2020 because of store closures and shoppers’ fear of contracting the coronavirus in public. And figures from Q1 2021 show that the coronavirus was still making an impact on retail spending. Online sales increased 39% year over year in Q1 2021, nearly triple the 14% increase in Q1 2020, and faster than Q3 2020 and Q4 2020.”¹⁰⁶

87. An unprecedented demand on internet retailers has also led to product scarcity online, with some retailers out of stock and experiencing shipping problems, including large delays.¹⁰⁷ Consumers thus have become only more reliant on Amazon—the world’s largest online retailer—for essential consumer goods. Indeed, by July 2020, Amazon’s sales accounted for **almost half of all United States retail e-commerce**.¹⁰⁸ By comparison, Amazon’s nine largest competitors had only a 1.1 to 6.6 percent share.¹⁰⁹

88. Industry observers have universally recognized that Amazon saw “unprecedented demand amid widespread coronavirus-related shutdowns.”¹¹⁰ As one observer put it, with “millions of Americans ordered to remain home, Amazon is now, more than ever, a lifeline for essentials for millions of people rather than just a convenient option for online shopping.”¹¹¹ By April 2020,

¹⁰⁵ See Digital Commerce 360, *Coronavirus adds \$105 billion to US ecommerce in 2020* (June 16, 2021), <https://www.digitalcommerce360.com/article/coronavirus-impact-online-retail/>.

¹⁰⁶ See *id.*

¹⁰⁷ See Katie Evans, *A viral surge: How the coronavirus is impacting shipping and delivery of online orders*, DIGITAL COMMERCE 360 (Mar. 20, 2020), <https://www.digitalcommerce360.com/2020/03/20/a-viral-surge-how-the-coronavirus-is-impacting-shipping-and-delivery-of-online-orders/>.

¹⁰⁸ See eMarketer, *Amazon Now Has Nearly 50% of US Ecommerce Market* (July 16, 2018), <https://www.emarketer.com/content/amazon-now-has-nearly-50-of-us-ecommerce-market>.

¹⁰⁹ *Id.*

¹¹⁰ See Sergei Klebnikov, *Jeff Bezos Gets \$6.4 Billion Richer As Amazon Stock Hits A New Record High*, FORBES (updated Apr. 14, 2020), <https://www.forbes.com/sites/sergeiklebnikov/2020/04/14/jeff-bezos-gets-63-billion-richer-as-amazon-stock-hits-a-new-record-high/>.

¹¹¹ See Jason Del Rey, *Amazon was already powerful. The coronavirus pandemic cleared the way to dominance.*, VOX (Apr. 10, 2020), <https://www.vox.com/recode/2020/4/10/21215953/amazon-fresh-walmart-grocery-delivery-coronavirus-retail-store-closures>.

1 consumer spending on Amazon had increased nearly 100 percent over 2019.¹¹² Fueled by the
 2 pandemic, Amazon's sales increased \$318.41 billion over 2020 as a whole, a 44.1% increase that
 3 eclipsed already bullish forecasts for Amazon's growth.¹¹³

4 89. One reason Amazon has seen its sales increase is that it can supply essential goods that
 5 are not always available on retail shelves in the COVID-19 era. And in terms of product diversity,
 6 Amazon sells twelve million products on the Amazon.com platform, with a particularly large range of
 7 consumer goods.¹¹⁴ In 2018, it was estimated that Amazon had 1.5 billion items listed for sale and over
 8 200 million users.¹¹⁵

9 90. On March 4, 2020, Senator Edward J. Markey (D-Massachusetts) wrote a letter to
 10 Amazon CEO Jeff Bezos about reports of price gouging on Amazon.¹¹⁶ He stated that "[i]nternet-based
 11 retailers such as Amazon.com have a particular responsibility to guard against price gouging in current
 12 circumstances as consumers—who are finding the shelves of local brick-and-mortar stores bare, and
 13 who may wish to avoid venturing into crowded stores and shopping malls—turn to the internet."¹¹⁷
 14 Consistent with Senator Markey's observation, and heeding the official guidance described above,
 15 consumers turned to Amazon—the world's dominant online retailer—throughout the pandemic to
 16 obtain the goods they required to survive and endure.

17
 18 ¹¹² See Facteus, *Facteus Insight Report on Consumer Spending and Transactions (FIRST)* (June 3,
 19 2020), <https://first.facteus.com/reports/first-report-6-3-2020> (last visited Oct. 22, 2021).

20 ¹¹³ See Blake Droesch, *Amazon dominates US ecommerce, though its market share varies by category*,
 21 EMARKETER (Apr. 27, 2021), <https://www.emarketer.com/content/amazon-dominates-us-ecommerce-though-its-market-share-varies-by-category>.

22 ¹¹⁴ See 60pi, *How Many Products Does Amazon® Carry?* (May 2016),
 23 https://0ca36445185fb449d582-f6ffa6baf5dd4144ff990b4132ba0c4d.ssl.cf1.rackcdn.com/IG_360piAmazon_9.13.16.pdf; Amazon store directory, https://www.amazon.com/gp/site-directory?ref=_nav_em_T1_0_2_2_36__fullstore (last visited July 2, 2020).

24 ¹¹⁵ See Neel Mehta et al., *Amazon changes prices on its products about every 10 minutes – here's how*
 25 *and why they do it*, BUSINESS INSIDER (Aug. 10, 2018), <https://www.businessinsider.com/amazon-price-changes-2018-8>.

26 ¹¹⁶ See Sen. Edward J. Markey, Letter to Jeffrey P. Bezos, Amazon.com, Inc. (Mar. 4, 2020),
 27 <https://www.markey.senate.gov/imo/media/doc/letter%20to%20Bezos%20re%20coronavirus%20price-gouging.pdf> (last visited July 2, 2020).

28 ¹¹⁷ *Id.*

E. Amazon Raised Prices Excessively During the COVID-19 Pandemic

91. As the world’s largest online retailer, Amazon maintains its own inventory of products, which it sells directly to consumers across the country. These Amazon-supplied products account for approximately 32 percent of the revenue from of all products sold on Amazon.¹¹⁸ In addition, Amazon sells products provided by third-party suppliers. These third-party product sales account for approximately 68 percent of the sales revenue on the Amazon.com platform.¹¹⁹

92. As the COVID-19 pandemic spread, Amazon’s prices for many essential goods spiked dramatically. In his March 4, 2020 letter to Amazon CEO Jeff Bezos, Senator Markey described “disturbing news reports of coronavirus-inspired price gouging on Amazon.com,” including that bottles of Purell hand sanitizer, “typically sold for less than \$10 per box,” were “listed at \$400,” and similarly inflated prices existed for face masks.¹²⁰ Senator Markey explained that, as “first steps,” Amazon had announced the prior week that it had removed listings for price gouging and reiterated that third-party suppliers must comply with Amazon’s “fair pricing policies,” but that there had been “continued reports of price gouging and a lack of transparency,” which left consumers exposed to unfair trade practices.¹²¹ He referenced a third-party Amazon supplier whose goods were sold on Amazon and described Amazon’s enforcement policy as “haphazard.”¹²²

93. On March 11, 2020, the United States Public Interest Research Group Education Fund (“PIRG”) published a study showing that prices for half of certain public-health products sold on Amazon—particularly, products in high demand during the COVID-19 crisis—had increased by more than 50 percent in February above their 90-day average.¹²³ These price increases were not limited to products supplied by third parties. Of the essential products PIRG evaluated, nearly one in six supplied by Amazon itself increased in price by more than 50 percent above the 90-day average.

¹¹⁸ See eMarketer, *supra* note 108.

¹¹⁹ *Id.*

¹²⁰ See Markey, *supra* note 116.

¹²¹ *Id.*

¹²² *Id.*

¹²³ See U.S. Pub. Interest Research Grp. Ed. Fund, *supra* note 9.

94. Referencing the PIRG study, attorneys general from 33 states sent Amazon a letter on March 25, 2020, calling on Amazon to eliminate price gouging on its platform. The attorneys general, including Washington's, noted that "[a]s COVID-19 spreads throughout the country, it is especially important unscrupulous sellers do not take advantage of Americans by selling products at unconscionable prices."¹²⁴ The letter implored Amazon to take action to abide by and enforce "the nation's consumer protection laws."¹²⁵

95. Other industry observers have analyzed Amazon's pricing data and concluded that Amazon "doubled its own prices on essential goods as the COVID-19 pandemic grew between early January and mid-March [2020]."¹²⁶ At one point in March 2020, observers noted, Amazon "listed a four-pack of its own brand of toilet paper for \$72."¹²⁷ Consumers confirmed these unconscionable prices, reposting the listings online hoping to warn others that Amazon itself was "participating in price gouging".¹²⁸


¹²⁴ See Letter from 33 state attorneys general to Jeff Bezos (Mar. 25, 2020), https://www.attorneygeneral.gov/wp-content/uploads/2020/03/03_25_2020_Multistate-letter.pdf.

¹²⁵ *Id.*

¹²⁶ See Adam Walser, *Data shows Amazon raised prices during pandemic alongside sellers accused of price gouging*, ABC 10 NEWS (updated Mar. 28, 2020), <https://www.10news.com/news/coronavirus/data-shows-amazon-raised-prices-during-pandemic-alongside-sellers-accused-of-price-gouging/>.

¹²⁷ *Id.*

¹²⁸ See u/cpotter, *Amazon themselves participating in price gouging. \$72 for toilet paper.*, REDDIT (Mar. 14, 2020), https://www.reddit.com/r/mildlyinfuriating/comments/fiuwuo/amazon_themselves_participating_in_price_gouging/.

6 Amazon themselves participating in price gouging. \$72 for toilet paper.


96. A September 2020 study by Public Citizen confirmed that, “[w]hile the initial media and law enforcement focus of price gouging was on third-party sellers, . . . Amazon is directly selling items at significantly above the regular market price despite publicly stating that the company is fighting price gouging.”¹²⁹ Public Citizen identified pandemic price increases by Amazon on its own inventory that ranged from 48% to 1,010%.¹³⁰ The study concluded that “Amazon has misled the public, law enforcement, and policymakers about price increases during the pandemic.”¹³¹ The study identified examples of price gouging as follows:

Note: All products in this section were listed as “sold by Amazon,” and not sold by third-party vendors.

¹²⁹ Public Citizen, *supra* note 10 at 12.

¹³⁰ *Id.*

¹³¹ *Id.* at 4.

Figure 1: Examples of Price Gouging on Products Sold by Amazon

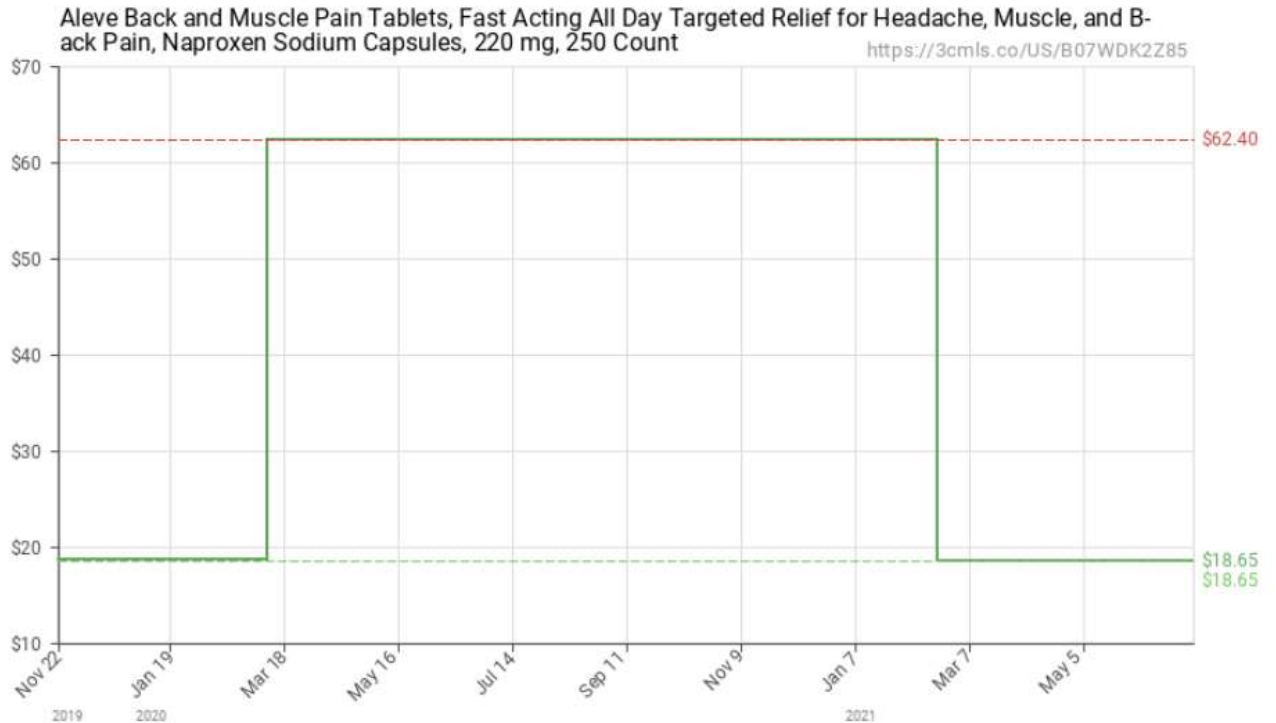
Product	Amazon Price	Expected Price	Date Range	% Increase
Disposable Face Masks, package of 50	\$39.99	~\$4.00	April 1 – Aug. 16	1000%
Hand Sanitizer	\$35.38	~\$24.00	May 10 – Aug. 16	48%
Disinfectant Spray	\$13.04	\$6.99	Aug. 1, 2019 – Aug. 16, 2020	87%
Antibacterial Soap	\$7.00	\$1.49	May 19 – Aug. 16, 2020	470%
Nitrile Disposable Gloves	\$29.95	\$8.91	Aug. 1, 2019 – Aug. 2020	336%
Toilet Paper	\$36.39	\$6.89	May 26 – Aug. 16, 2020	528%
Paper Towels	\$46.94	\$15.49	May 1 – Aug. 16, 2020	303%
Flour	\$80.35	\$18.88	May 1 – Aug. 16, 2020	425%
Sugar	\$5.56	\$1.07	May 1 – Aug. 16, 2020	520%
Corn Starch	\$8.99	\$0.89	Feb. 1 – Aug. 16, 2020	1010%

SOURCE: AUTHOR OBSERVATIONS OF PRICES AT AMAZON.COM, KEEPA.COM, CAMELCAMELCAMEL.COM AND OTHER RETAIL SITES AS NECESSARY.

97. Although certain offending listings have been removed, Plaintiffs' independent investigation has confirmed that Amazon sold products at unlawfully inflated amounts during the COVID-19 crisis, including before and after Amazon claimed to have cracked down on price gouging, and Amazon continues to do so. Moreover, these price increases occurred both on products supplied by third parties and on products supplied by Amazon.

98. Notably, both Mrs. King and Ms. Hanson were gouged on products supplied by Amazon directly. The Clorox Disinfecting Wipes that Mrs. King purchased at a 65% markup were supplied by Amazon (not a third party), as was the vegetable glycerin she purchased to make hand sanitizer (99% price increase). The flea spray that Ms. Hanson purchased at a 58% price increase was likewise supplied by Amazon. Additional examples of unconscionable price increases on Amazon's own inventory abound, including the following:

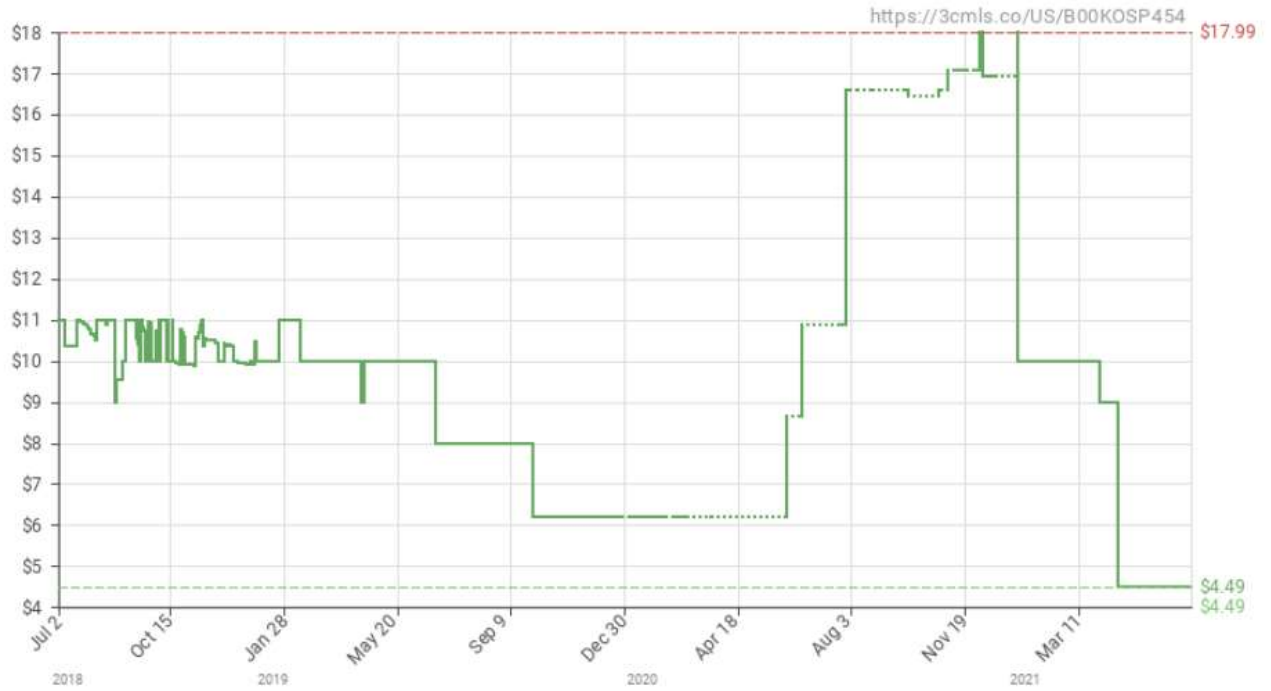
- **Aleve Back & Muscle Pain Tablet, Pain Reliever:** Increased **233 percent**, from \$18.75 to \$62.40, immediately after the January 31, 2020 declaration of a national emergency by the HHS.¹³²



¹³² See <https://camelcamelcamel.com/product/B07WDK2Z85> (last visited Oct. 22, 2021); see also <https://keepa.com/#!/product/1-B07WDK2Z85> (last visited Oct. 22, 2021).

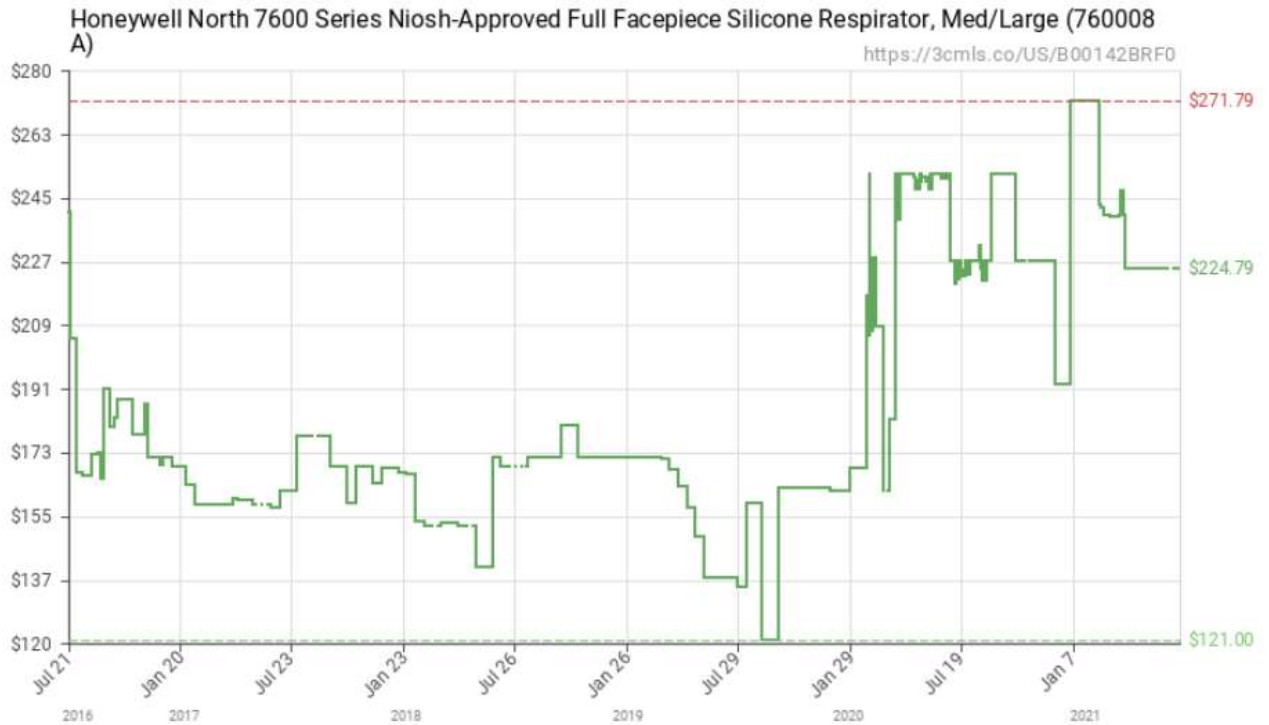
- **Curad Alcohol Prep Pads:** Increases of more than **157 percent**, from less than \$7 to \$17.99, following the January 31, 2020 declaration of a national emergency by the HHS.¹³³

Curad Alcohol Prep Pads , Thick Alcohol Swabs (Pack of 400) - CUR45585RB



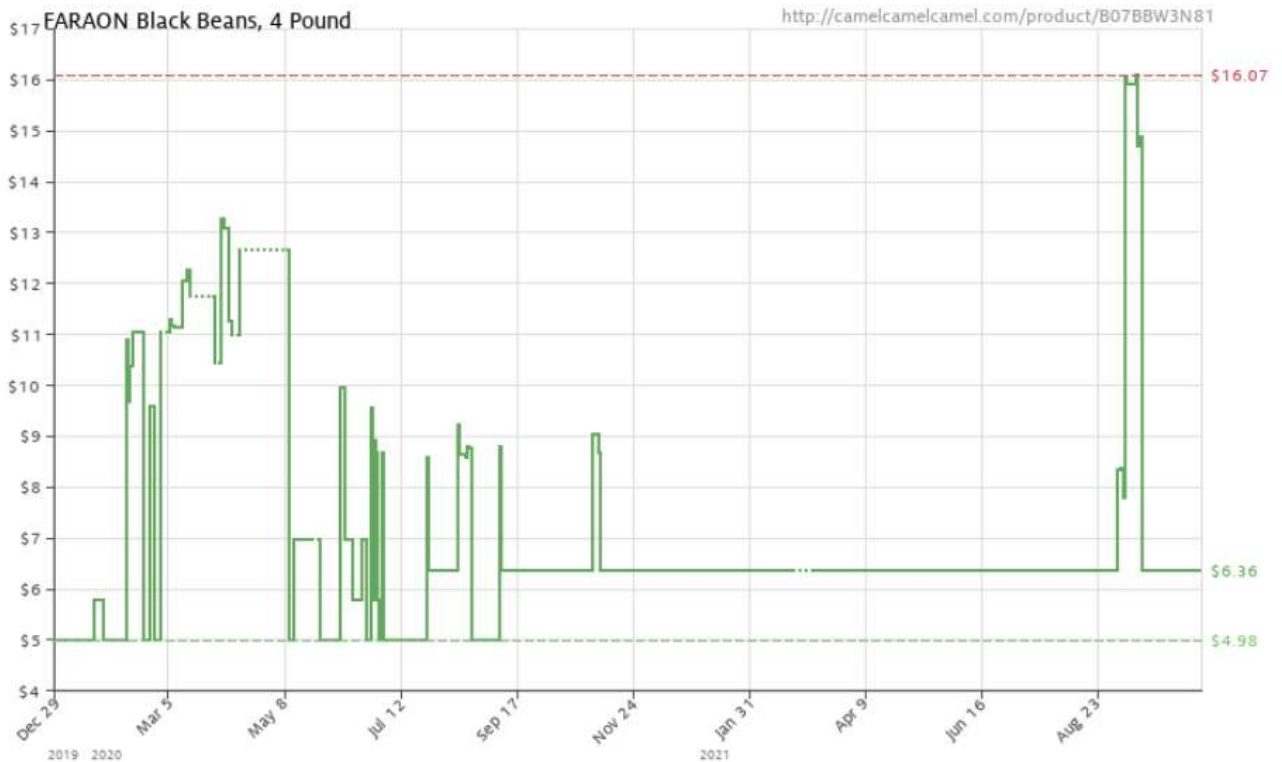
¹³³ See <https://camelcamelcamel.com/product/B00KOSP454> (last visited Oct. 22, 2021).

- **North 760008A Silicone Full Facepiece Respirators – Face Piece Only:** Increases of **61 percent**, from \$169.02 to \$271.79, following the January 31, 2020 declaration of a national emergency by the HHS.¹³⁴



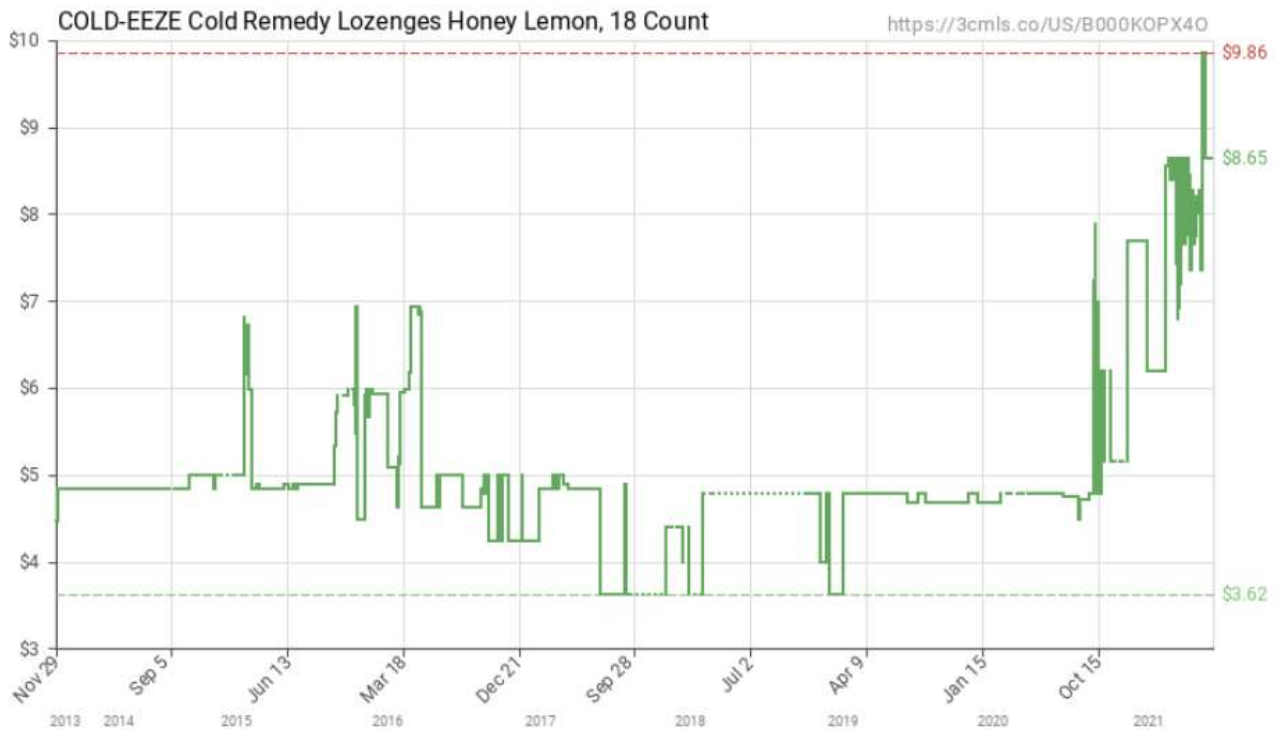
¹³⁴ See <https://camelcamelcamel.com/product/B00142BRF0> (last visited Oct. 22, 2021); <https://keepa.com/#!/product/1-B00142BRF0> (last visited Oct. 22, 2021).

- **Faraon Black Beans, 4 lb:** Increases up to **223 percent**, from \$4.98 to \$16.07, following the January 31, 2020 declaration of a national emergency by the HHS.¹³⁵



¹³⁵ See <https://camelcamelcamel.com/product/B07BBW3N81> (last visited Oct. 22, 2021); see also <https://keepa.com/#!/product/1-B07BBW3N81> (last visited Oct. 22, 2021).

- **Cold-EEZE Cold Remedy Lozenges Honey Lemon:** Increases of *111 percent*, from \$4.68 to \$9.86 following the January 31, 2020 declaration of a national emergency by the HHS.¹³⁶



¹³⁶ See <https://camelcamelcamel.com/product/B000KOPX4O> (last visited Oct. 22, 2021); see also <https://keepa.com/#!/product/1-B000KOPX4O> (last visited Oct. 22, 2021).

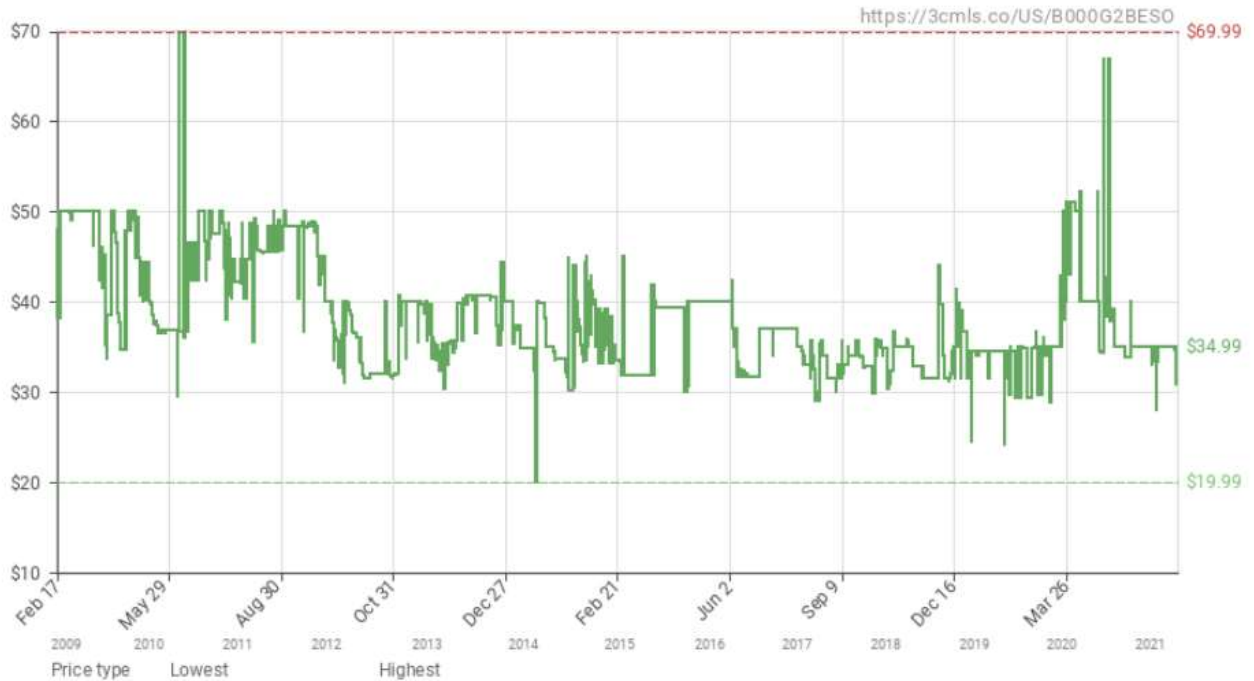
- **Lysol Disinfecting Wipes:** Increases exceeding **86 percent**, from less than \$12 to \$22.36, following the January 31, 2020 declaration of a national emergency by the HHS.¹³⁷



¹³⁷ See <https://camelcamelcamel.com/product/B00Q70RCW6> (last visited Oct. 22, 2021); see also <https://keepa.com/#!/product/1-B00Q70RCW6> (last visited Oct. 22, 2021).

- **Germ Guardian Pluggable Air Purifier & Sanitizer:** Increases of **91 percent**, from \$34.99 to \$66.99, following the January 31, 2020 declaration of a national emergency by the HHS.¹³⁸

GermGuardian Pluggable Air Purifier & Sanitizer, Eliminates Germs and Mold with UV-C Light, Deodorizer for Odor from Pets, Diapers, Room Freshener for Small Rooms, GG1000



99. Additional excessive price increases on Amazon's own inventory of products following the HHS' declaration of a national emergency include, but are not limited to, the following:

OTHER PRICE INCREASES ON AMAZON INVENTORY DURING THE COVID-19 PANDEMIC	
PRODUCT	PRICE INCREASE
Clorox Hydrogen Peroxide Disinfecting Wipes	217% ¹³⁹
Curad Alcohol Prep Pads	176% ¹⁴⁰

¹³⁸ See <https://camelcamelcamel.com/product/B000G2BESO> (last visited Oct. 22, 2021); see also <https://keepa.com/#!/product/1-B000G2BESO> (last visited Oct. 22, 2021).

¹³⁹ See <https://camelcamelcamel.com/product/B00K3U1B64> (last visited June 30, 2021); see also <https://keepa.com/#!/product/1-B00K3U1B64> (last visited Oct. 22, 2021).

¹⁴⁰ See <https://keepa.com/#!/product/1-B00KOSP454> (last visited Oct. 22, 2021); see also <https://camelcamelcamel.com/product/B00KOSP454> (last visited Oct. 22, 2021).

Cottonelle Flushable Wet Wipes	156% ¹⁴¹
Dynarex Alcohol Prep Pad	122% ¹⁴²
GoYoga Yoga Mat	~99% ¹⁴³
Hibiclens Antibacterial / Antiseptic Skin Cleanser	97% ¹⁴⁴
Aleve Arthritis Cap Pain Relief	~90% ¹⁴⁵
Meyenberg Whole Powdered Goat Milk	82% ¹⁴⁶
Spectrum Essential Organic Ground Flaxseed	66% ¹⁴⁷
StarKist Chunk Light Tuna in Water	59% ¹⁴⁸
Ice Mountain 199% Natural Spring Water	54% ¹⁴⁹
Medline Iodine Pads	~52% ¹⁵⁰
KIND Bars, Dark Chocolate Nuts & Sea Salt	36% ¹⁵¹
Tide PODS Free and Gentle Laundry Detergent	30% ¹⁵²
3M Full Facepiece Reusable Respirator 6700	23% ¹⁵³

¹⁴¹ See <https://camelcamelcamel.com/product/B07B46WWN2> (last visited July 4, 2020). Price increase estimated based on data available July 4, 2020. Pricing history for this product is no longer available on camelcamelcamel.com.

¹⁴² See <https://keepa.com/#!/product/1-B005BFL0RQ> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B005BFL0RQ> (last visited Oct. 22, 2021).

¹⁴³ See <https://camelcamelcamel.com/product/B01IZDFWY2> (last visited Oct. 22, 2021).

¹⁴⁴ See <https://keepa.com/#!/product/1-B00EV1D79A> (last visited Oct. 22, 2021);
<https://camelcamelcamel.com/product/B00EV1D79A> (last visited Oct. 22, 2021).

¹⁴⁵ See <https://camelcamelcamel.com/Aleve-Arthritis-Naproxen-Reliever-Headache/product/B07ZV5V19T> (last visited Oct. 22, 2021).

¹⁴⁶ See <https://keepa.com/#!/product/1-B004K69OMU> (last visited Oct. 22, 2021);
<https://camelcamelcamel.com/product/B004K69OMU> (last visited Oct. 22, 2021).

¹⁴⁷ See <https://keepa.com/#!/product/1-B00DOKFLYI> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B00DOKFLYI> (last visited Oct. 22, 2021).

¹⁴⁸ See <https://keepa.com/#!/product/1-B00FWUO2IE> (last visited Oct. 22, 2021).

¹⁴⁹ See <https://keepa.com/#!/product/1-B01KCNJHYO> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/Ice-Mountain-Natural-8-ounce-plastic/product/B01KCNJHYO> (last visited Oct. 22, 2021).

¹⁵⁰ See <https://camelcamelcamel.com/product/B075KKP2BR> (last visited Oct. 22, 2021).

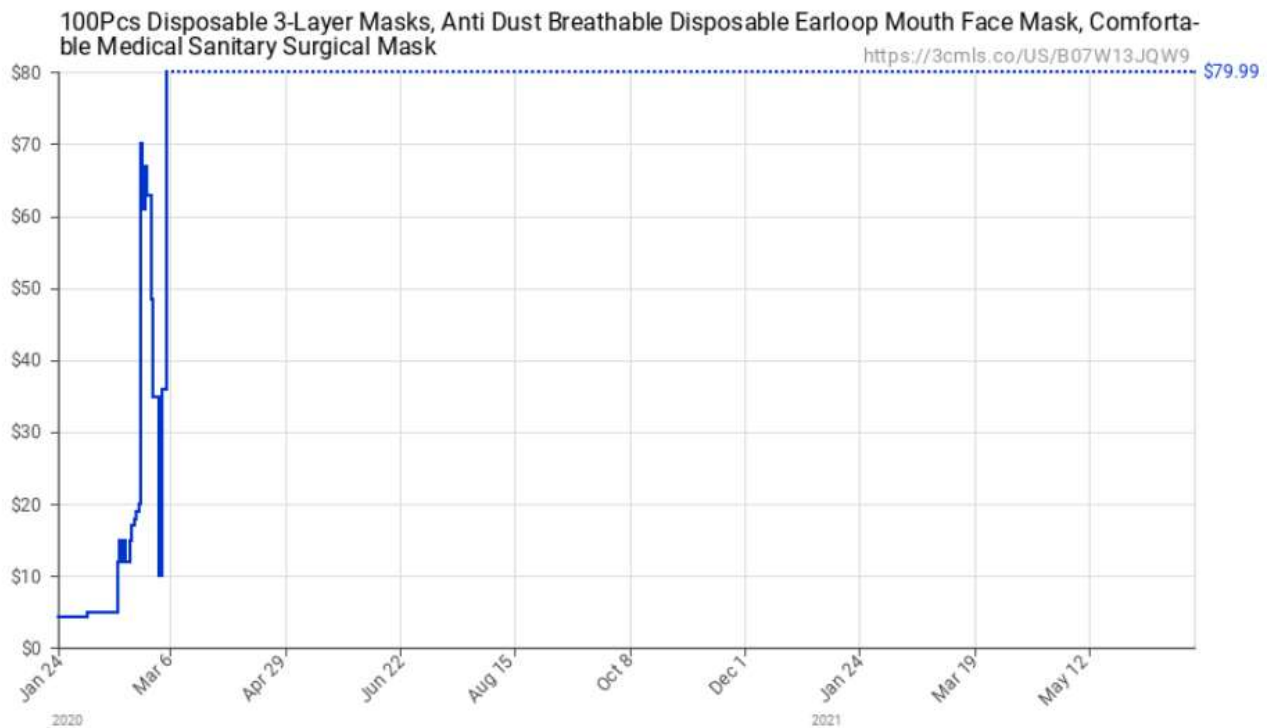
¹⁵¹ See <https://keepa.com/#!/product/1-B07PMTGM3C> (last visited Oct. 22, 2021);
<https://camelcamelcamel.com/product/B07PMTGM3C> (last visited Oct. 22, 2021).

¹⁵² See <https://keepa.com/#!/product/1-B07JMK7STT> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B07JMK7STT> (last visited Oct. 22, 2021).

¹⁵³ See <https://keepa.com/#!/product/1-B007JZ1K1C> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B007JZ1K1C> (last visited Oct. 22, 2020).

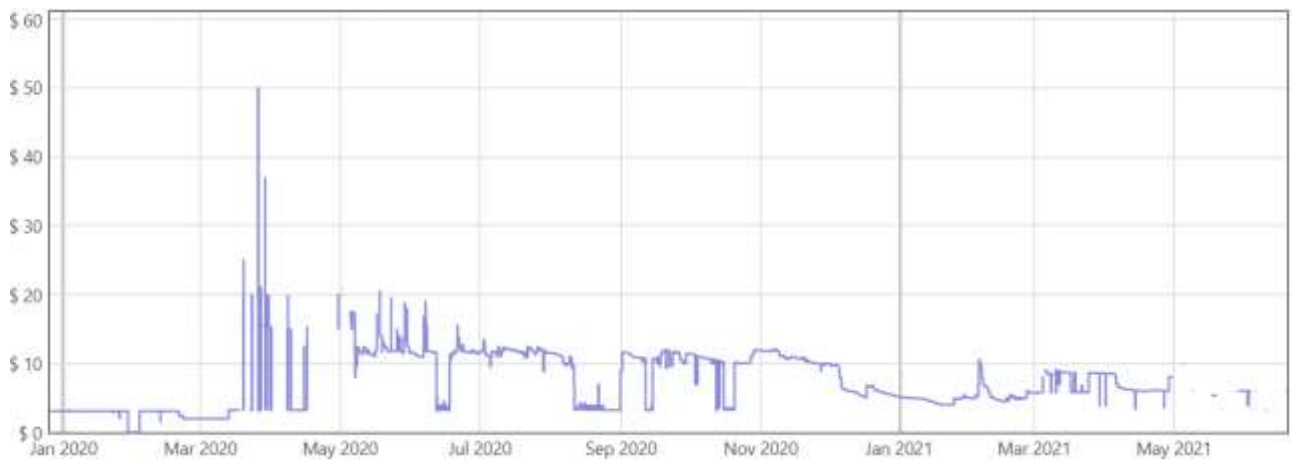
100. In addition to increasing prices on its own inventory during the COVID-19 pandemic, Amazon sold third-party-supplied products at vastly inflated prices and, by taking a share of the transaction proceeds, profited from the excess. Just by way of example:

- **Disposable 3-Layer Face Masks:** Increase of **1,800 percent**, from \$4.21 to \$79.99, following the January 31, 2020 declaration of a national emergency by the HHS.¹⁵⁴



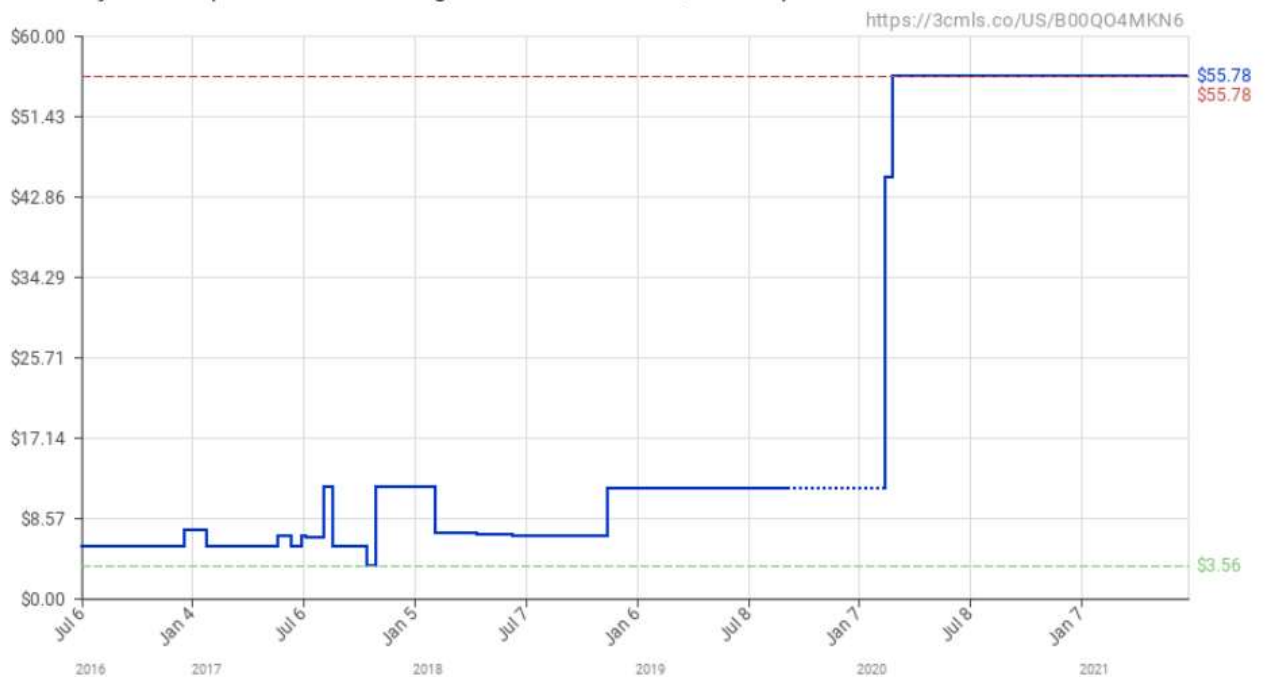
¹⁵⁴ See <https://camelcamelcamel.com/product/B07W13JQW9> (last visited Oct. 22, 2021).

- **Arm & Hammer Pure Baking Soda, 5 lb.:** Increase of **1,523 percent**, from \$3.08 to \$50.00 following the January 31, 2020 declaration of a national emergency by the HHS.¹⁵⁵



- **Dynarex Corporation Surgical Procedure Masks:** Increase of **376 percent**, from \$11.71 to \$55.78, following the January 31, 2020 declaration of a national emergency by the HHS.¹⁵⁶

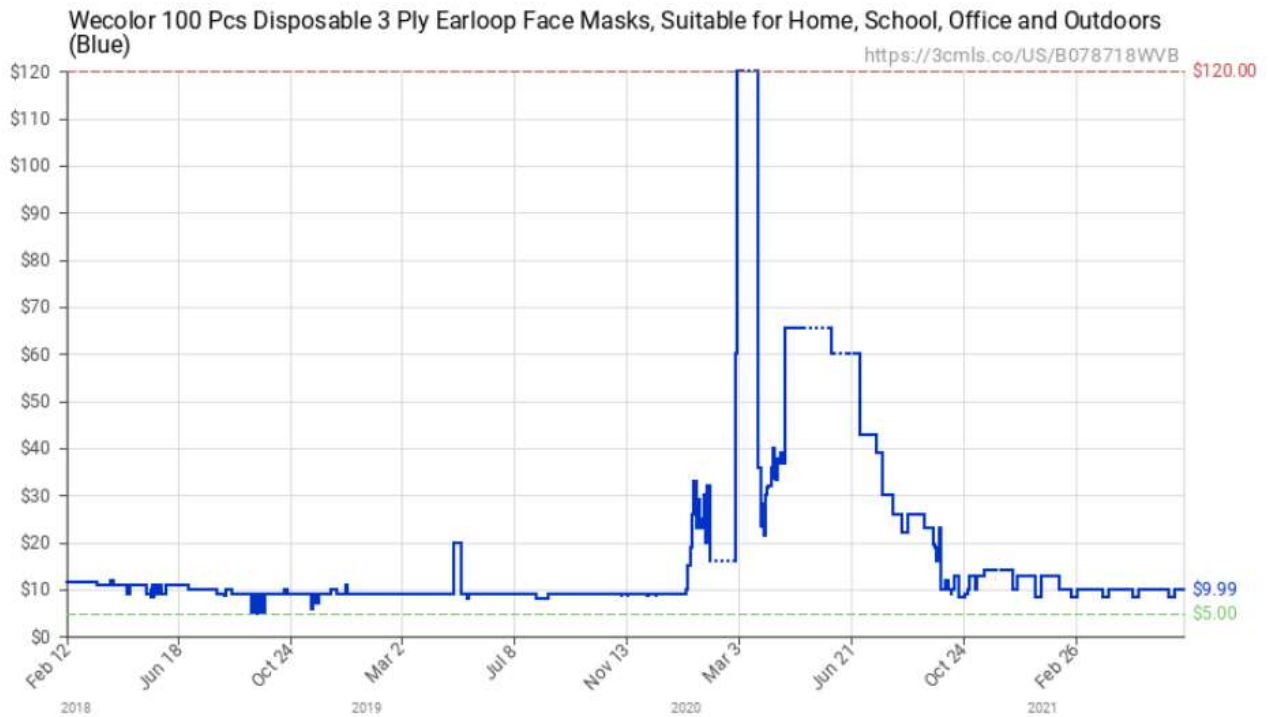
Dynarex Corporation 2201-50 Surgical Procedure Mask w/ Ear Loop 50-Pack



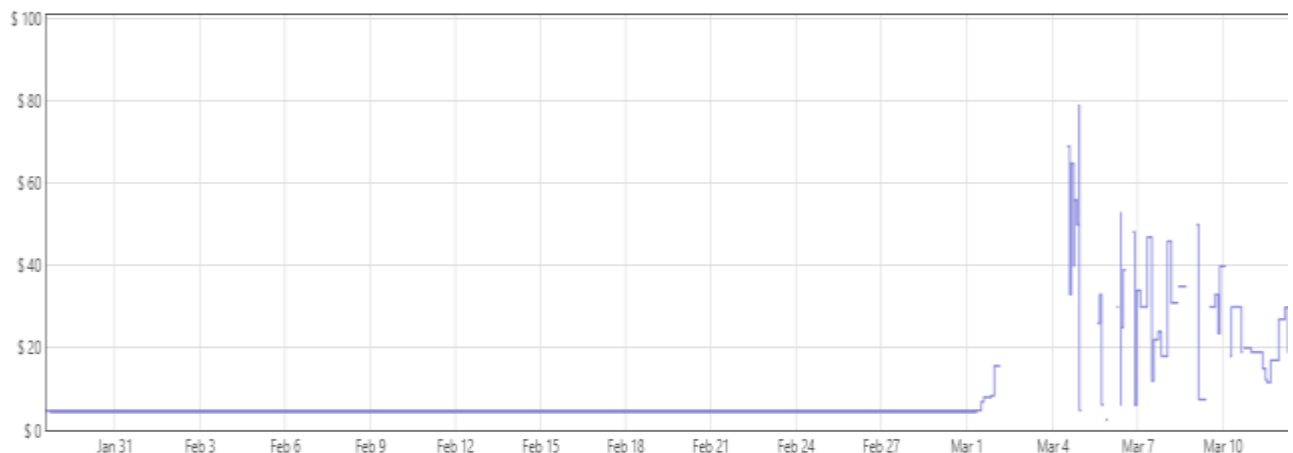
¹⁵⁵ See <https://keepa.com/#!/product/1-B00HNSJSX2> (last visited Oct. 22, 2021).

¹⁵⁶ See <https://camelcamelcamel.com/Dynarex-Corporation-2201-50-Surgical-Procedure/product/B00QO4MKN6> (last visited Oct. 22, 2021). Base price of \$11.71 identified on camelcamelcamel.com as of July 4, 2020.

- **Disposable Earloop Face Masks:** Increases exceeding **500 percent**, from less than \$20 to \$120, following the January 31, 2020 declaration of a national emergency by the HHS.¹⁵⁷



- **Cold-EEZE Cold Remedy Lozenges Honey Lemon:** Increases of **1,599 percent**, from less than \$4.65 to \$79.00, following the January 31, 2020 declaration of a national emergency by the HHS.¹⁵⁸



¹⁵⁷ See <https://camelcamelcamel.com/product/B078718WVB> (last visited Oct. 22, 2021). Base price of less than \$20 identified on camelcamelcamel.com as of July 4, 2020.

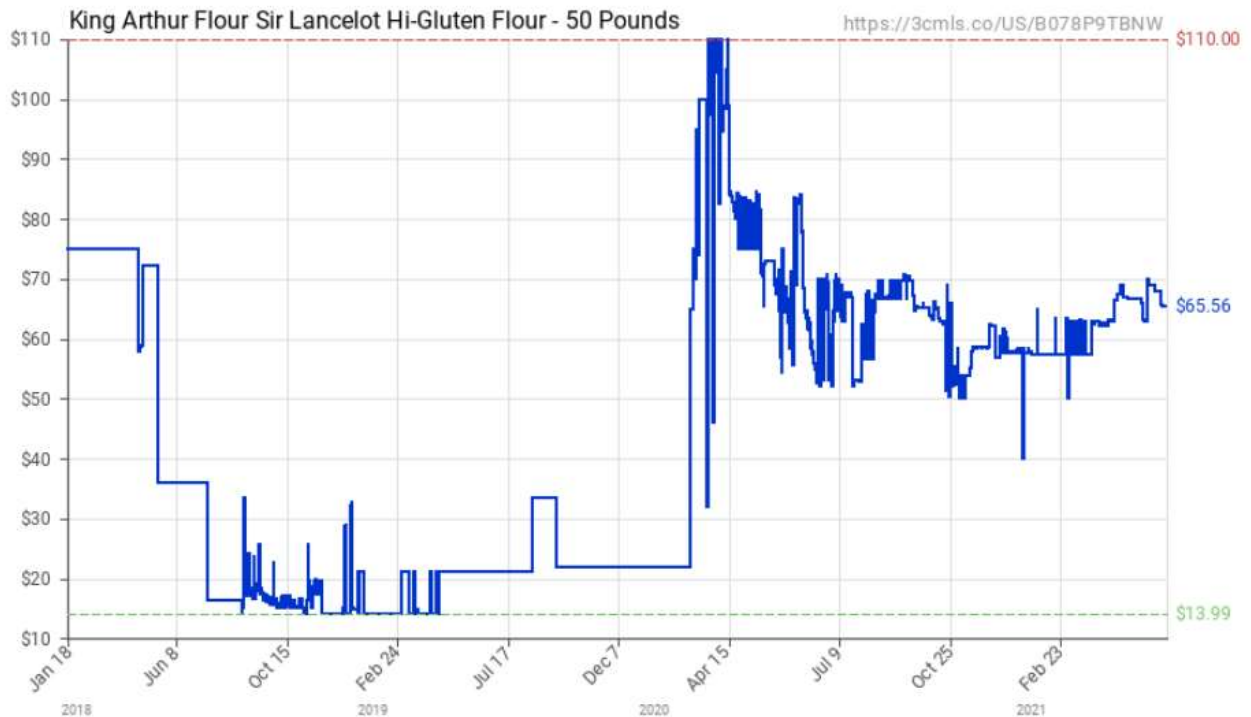
¹⁵⁸ See <https://keepa.com/#!/product/1-B000KOPX4O> (last visited Oct. 22, 2021); vsee also <https://camelcamelcamel.com/product/B000KOPX4O> (Oct. 22, 2021).

- **Goya Black Beans Dry 14 oz.:** Increases up to **521 percent**, from \$3.54 to \$21.99, following the January 31, 2020 declaration of a national emergency by the HHS.¹⁵⁹



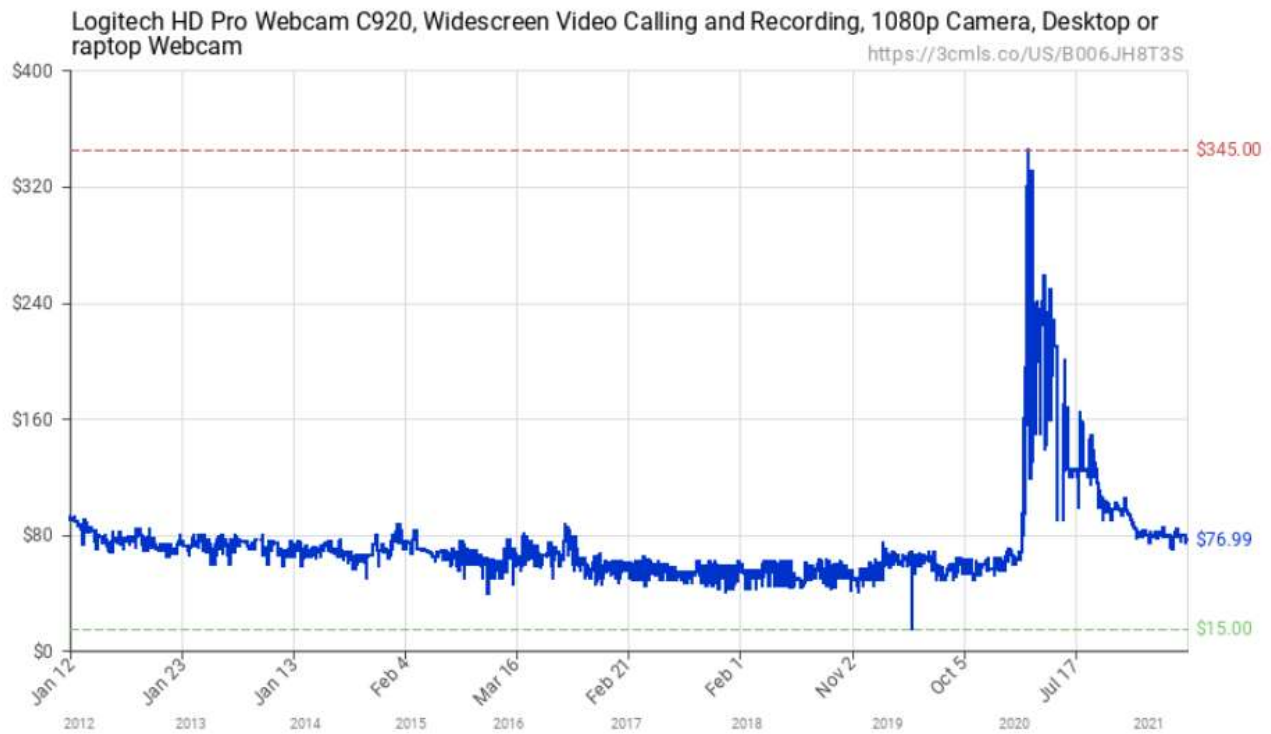
¹⁵⁹ See <https://keepa.com/#!/product/1-B00IMLRH9G> (last visited Oct. 22, 2021). Amazon also sold its own inventory of this product in 2020 at prices up to \$14.47, roughly four times the price prevailing prior to the pandemic. See *id.*

- **King Arthur Flour:** Increases up to **400 percent**, from \$22.00 to \$110.00, following the January 31, 2020 declaration of a national emergency by the HHS.¹⁶⁰



¹⁶⁰ See <https://camelcamelcamel.com/product/B078P9TBNW> (last visited Oct. 22, 2021); see also <https://keepa.com/#!/product/1-B078P9TBNW> (last visited Oct. 22, 2021). Amazon sold its own inventory of this product during 2020 at prices exceeding \$70, roughly three times the pre-pandemic price. See <https://camelcamelcamel.com/product/B078P9TBNW> (last visited Oct. 22, 2021).

- **Logitech HD Pro Webcam C920:** Increase of at least **423 percent**, from less than \$65.99 to \$345, following the January 31, 2020 declaration of a national emergency by the HHS.¹⁶¹



¹⁶¹ See <https://camelcamelcamel.com/product/B006JH8T3S> (last visited Oct.22, 2021); see also <https://keepa.com/#!/product/1-B006JH8T3S> (last visited Oct. 22, 2021).

1	Nishiki Medium Grain Rice	880% ¹⁶⁴
2	Lysol Disinfecting Wipes	~745% ¹⁶⁵
3	Advil Coated Tablets Pain Reliever and Fever Reducer	656% ¹⁶⁶
4	Curad Alcohol Prep Pads	542% ¹⁶⁷
5	StarKist Chunk Light Tuna in Water	517% ¹⁶⁸
6	Kraft Easy Mac Microwavable Macaroni and Cheese	485% ¹⁶⁹
7	Barilla Pasta, Spaghetti	381% ¹⁷⁰
8	Planters Salted Peanuts (48 Pack)	368% ¹⁷¹
9	Almond Milk	330% ¹⁷²
10	Kraft Macaroni & Cheese	315% ¹⁷³
11	Bounty Select-A-Size Paper Towels	319% ¹⁷⁴
12	Chef Boyardee, Spaghetti & Meatballs	295% ¹⁷⁵
13	Asian Best Jasmine Rice	255% ¹⁷⁶

¹⁶⁴ See <https://keepa.com/#!/product/1-B00852ZN2U> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B00852ZN2U> (last visited Oct. 22, 2021).

¹⁶⁵ See <https://camelcamelcamel.com/product/B00Q70RCW6> (last visited Oct. 22, 2021);
see also <https://keepa.com/#!/product/1-B00Q70RCW6> (last visited Oct. 22, 2021).

¹⁶⁶ See <https://keepa.com/#!/product/1-B0000VLK4O> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B0000VLK4O> (last visited Oct. 22, 2021).

¹⁶⁷ See <https://keepa.com/#!/product/1-B00KOSP454> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B00KOSP454> (last visited Oct. 22, 2021).

¹⁶⁸ See <https://keepa.com/#!/product/1-B00FWUO2IE> (last visited Oct. 22, 2021).
<https://camelcamelcamel.com/product/B00FWUO2IE> (last visited Oct. 22, 2021).

¹⁶⁹ See <https://keepa.com/#!/product/1-B005ECO3H0> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B005ECO3H0> (last visited Oct. 22, 2021).

¹⁷⁰ See <https://keepa.com/#!/product/1-B00WBGKJPW> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B00WBGKJPW> (last visited Oct. 22, 2021).

¹⁷¹ See <https://keepa.com/#!/product/1-B004TPU7LO> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B004TPU7LO> (last visited Oct. 22, 2021).

¹⁷² See <https://keepa.com/#!/product/1-B07HL1NRGQ> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B07HL1NRGQ> (last visited Oct. 22, 2021).

¹⁷³ See <https://keepa.com/#!/product/1-B011W21U0I> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B011W21U0I> (last visited Oct. 22, 2021).

¹⁷⁴ See <https://keepa.com/#!/product/1-B010OW4KMW> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B010OW4KMW> (Oct. 22, 2021).

¹⁷⁵ See <https://keepa.com/#!/product/1-B004XVZG1U> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B004XVZG1U> (last visited Oct. 22, 2021).

¹⁷⁶ See <https://keepa.com/#!/product/1-B019VPL9OK> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B019VPL9OK> (last visited Oct. 22, 2021).

Raven Powder-Free Disposable Black Nitrile 6 Mi. Gloves	230% ¹⁷⁷
Kirkland Signature Dried Cherries, 20 Ounce	153% ¹⁷⁸
Better Than Bouillon Organic Chicken Base	119% ¹⁷⁹
Elder Berry Whole, dried 1lb	67% ¹⁸⁰
Kirkland Signature Ibuprofen Liquid Softgels	66% ¹⁸¹

F. Amazon is Responsible for Unlawful Price Increases on All Products Sold on Its Platform

102. Amazon is accountable for unlawfully increasing the prices on its own inventory of products sold or offered to consumers during the COVID-19 crisis. Amazon is also legally responsible for price gouging on the third-party products it markets to consumers. Far from serving as a passive intermediary, Amazon controls the sale and marketing of all third-party products on its platform and receives a portion of the transaction proceeds, typically around 15 percent of the sales price (in addition to assessing recurring fees on third-party suppliers).¹⁸²

103. Amazon's control over third-party products extends to pricing. For certain third-party products, Amazon retains complete control of the prices at which they are offered. In particular, third-party suppliers who enroll in Amazon's "Sold by Amazon" ("SBA") program are guaranteed a "hands off the wheel selling experience," through which Amazon retains absolute discretion to price and reprice third-party inventory however Amazon sees fit. In the SBA program, the third-party supplier is guaranteed revenue from the sale of its product on Amazon.com based on the Minimum Gross Proceeds ("MGP") price, which Amazon sets unilaterally. Moreover, whatever the MGP price may be,

¹⁷⁷ See <https://keepa.com/#!/product/1-B002XXO5US> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B002XXO5US> (last visited Oct. 22, 2021).

¹⁷⁸ See <https://keepa.com/#!/product/1-B004CSGRS0> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B004CSGRS0> (last visited Oct. 22, 2021).

¹⁷⁹ See <https://keepa.com/#!/product/1-B00415IRQO> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B00415IRQO> (last visited Oct. 22, 2021).

¹⁸⁰ See <https://keepa.com/#!/product/1-B076JMVSW5> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B076JMVSW5> (last visited Oct. 22, 2021).

¹⁸¹ See <https://keepa.com/#!/product/1-B000VK2QPQ> (last visited Oct. 22, 2021);
see also <https://camelcamelcamel.com/product/B000VK2QPQ> (last visited Oct. 22, 2021).

¹⁸² See Dave Hamrick, *Amazon FBA Fees: How They Work and How to Profit as a Seller*, JUNGLESCOUT (Mar. 24, 2021), <https://www.junglescout.com/blog/amazon-fba-fees/>.

1 *the price listed for and sold to the Amazon consumer* is set solely by Amazon, and may be more or less
 2 than the MGP price—it is controlled by Amazon.¹⁸³

3 104. In other cases involving “large or strategic” third-party suppliers, Amazon also
 4 negotiates all pricing terms,¹⁸⁴ or negotiates most-favored-nation protections assuring that third-party
 5 suppliers do not undercut Amazon’s prices when offering their products through other retail outlets.¹⁸⁵

6 105. Amazon also offers third-party suppliers “Automated Pricing” services, whereby
 7 Amazon will automatically adjust the prices for third-party-supplied products based on preset “rules”
 8 Amazon makes available to the suppliers.¹⁸⁶ With Automated Pricing, Amazon generally adjusts the
 9 pricing of third-party products to match or stay in some relationship to competitor prices.¹⁸⁷ This
 10 service coordinates pricing across Amazon’s platform. If competitive benchmarks increase for any
 11 reason—including price gouging—Amazon adjusts all automatically priced products accordingly
 12 across its ecosystem. If Amazon were concerned that certain products supplied by third parties were
 13 being inflated compared to pre-emergency prices, it could have turned off its automatic repricing
 14 software that set prices for specific products and sales beyond lawful limits.

15 106. Even in instances where third-party suppliers retain some authority to set prices,
 16 Amazon establishes the price ceiling and retains the ultimate right to reject a price. Amazon has a “fair
 17 pricing policy” pursuant to which it “regularly monitors the prices” set by third-party suppliers.¹⁸⁸ If
 18 Amazon identifies a price it considers too high relative to other prices (on or off Amazon’s platform),

19 _____
 20 ¹⁸³ See John Robb, *The Amazon SBA Program (aka Sold by Amazon.com)*, ECOMCREW (Jan. 2020),
<https://www.ecomcrew.com/the-amazon-sba-program-aka-sold-by-amazon/>.

21 ¹⁸⁴ See *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing of*
 22 *the H. Subcomm. on Antitrust, Commercial, & Admin. Law, Comm. on the Judiciary*, 116th Cong.
 23 (July 16, 2019) (responses of Amazon to Questions for the Record), [https://docs.house.gov/](https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD038.pdf)
[meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD038.pdf](https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD038.pdf).

24 ¹⁸⁵ See *id.* at 1.

25 ¹⁸⁶ See Amazon, *Create a Pricing Rule*, [https://sellercentral.amazon.com/gp/help/external/help-](https://sellercentral.amazon.com/gp/help/external/help-page.html?itemID=201995750)
[page.html?itemID=201995750](https://sellercentral.amazon.com/gp/help/external/help-page.html?itemID=201995750) (last visited July 1, 2021).

26 ¹⁸⁷ See *id.*

27 ¹⁸⁸ See Amazon, Amazon Marketplace Fair Pricing Policy,
<https://sellercentral.amazon.com/gp/help/external/G5TUVJKZHUVMN77V> (last visited July 1,
 28 2021).

Amazon may, among other things, remove the offer or suspend the seller.¹⁸⁹ Amazon may also remove the product from the “Buy Box” (discussed *infra*), the vehicle through which nearly all Amazon products are sold.¹⁹⁰ Amazon also polices the price ceiling by suggesting that third-party sellers lower their prices.¹⁹¹ In other instances, Amazon will unilaterally reduce the price of third-party-supplied products by providing the consumer with a “discount, which appears as a credit” in the consumer’s account.¹⁹² These “discounts” are provided exclusively by Amazon, not the third-party supplier.

107. Beyond pricing, Amazon controls all other aspects of transactions involving third-party-supplied products. Consumers who purchase third-party products generally have no direct interaction with the third-party suppliers. Amazon promotes the products on its website, the contents of which Amazon controls entirely. Pursuant to the Amazon Services Business Solutions Agreement, which third-party suppliers are required to sign to have their products sold on Amazon.com, “Amazon has the right to determine, the design, content, functionality, availability and appropriateness of its websites, selection, and any product or listing in the Amazon Stores, and all aspects of each Service, including [a third-party supplier’s] use of the same. Amazon may assign any of these rights or delegate any of its responsibilities.”¹⁹³ The Agreement also grants Amazon a royalty-free, non-exclusive, worldwide right and license to commercially or non-commercially exploit in any manner the information provided by third-party suppliers.¹⁹⁴

108. When a consumer purchases a third-party supplied product, Amazon collects the order, shipping, and payment information from the customer, and it processes all payments. Amazon maintains the right to use mechanisms to rate, or allow shoppers to rate, these products and suppliers

¹⁸⁹ *See id.*

¹⁹⁰ *See id.*; *see also* H. Subcomm. on Antitrust, Commercial, & Admin. Law, *supra* note 184, at 23.

¹⁹¹ *See* H. Subcomm. on Antitrust, Commercial, & Admin. Law, *supra* note 184, at 1-2.

¹⁹² *See id.* at 25.

¹⁹³ *See* Amazon, *Amazon Services Business Solutions Agreement* at S-6, <https://sellercentral.amazon.com/gp/help/external/G1791> (last visited July 1, 2021).

¹⁹⁴ *See id.* at 4.

1 and to make the ratings publicly available, which it frequently does at the time the consumer is
2 considering purchase.¹⁹⁵

3 109. Most third-party-supplied products sold by Amazon are “Fulfilled by Amazon” or
4 “FBA.” This means Amazon warehouses the products at its own storage facilities. Amazon maintains
5 electronic records tracking this inventory, which it can commingle with its own.¹⁹⁶ When a customer
6 orders an FBA product, Amazon packages and ships the product directly, while handling customer
7 service aspects of the transaction.¹⁹⁷ Amazon handles returns and reserves the right to fulfill customer
8 returns with *any* “returned Amazon Fulfillment Units.”¹⁹⁸ Amazon unilaterally determines which
9 products may participate in the FBA program.¹⁹⁹

10 110. Amazon also reserves “sole discretion” to “cancel[]” listings of third-party suppliers’
11 products or “remov[e]” suppliers’ listing privileges for violation of Amazon policies,²⁰⁰ to permanently
12 “withhold any payments” to suppliers for engaging in, *inter alia*, “illegal activity” or repeated
13 violations of Amazon’s “Program policies,”²⁰¹ and to “accept, calculate, and process cancellations,
14 returns, refunds, and adjustments for the benefit of customers.”²⁰² Amazon prohibits third-party
15 suppliers from sending unsolicited communications to customers, mandates that all communications
16
17
18
19

20 ¹⁹⁵ *See id.* at S.1.2.

21 ¹⁹⁶ *See id.* at F-4.

22 ¹⁹⁷ *See* JungleScout, *The State of the Amazon Seller 2021* at 14, available at
23 <https://www.junglescout.com/amazon-seller-report/> (last visited July 1, 2021); *see also*
generally Amazon Services Business Solutions Agreement, Fulfillment By Amazon Service
Terms, *supra* note 193.

24 ¹⁹⁸ *See* Amazon Services Business Solutions Agreement, *supra* note 193, at F-6.2.

25 ¹⁹⁹ *See id.* at F-1.

26 ²⁰⁰ *See* Amazon, *Listing Restrictions*, <https://sellercentral.amazon.com/gp/help/external/200832300>
(last visited July 1, 2021).

27 ²⁰¹ *See* Amazon Services Business Solutions Agreement, *supra* note 193, at 2.

28 ²⁰² *See id.* at S-2.2.

1 must be sent through a service provided on the Amazon platform, and Amazon keeps a record of all
2 correspondence using this service.²⁰³

3 111. Amazon also controls the entire “shopping experience” on its platform, using
4 proprietary ranking mechanisms to direct consumers to third-party products of Amazon’s choosing.
5 When a consumer searches for a generic product on Amazon—for example, “bleach”—the search
6 results are curated and ranked by Amazon.²⁰⁴ As any seller might, Amazon gives particular products
7 prominence or “shelf space.” Amazon does this not only by ranking search results, but also by
8 assigning products certain designations, such as “Sponsored,” or “Amazon’s Choice,” or “Best Seller,”
9 or “Amazon Prime.”²⁰⁵ The criteria for these designations is established by Amazon and, through them,
10 Amazon places the weight of its brand behind particular third-party-supplied products.

11 112. Amazon also determines which supplier will “win” particular transactions, effectively
12 allocating sales between itself and different third-party suppliers without any meaningful involvement
13 (or even knowledge) of the consumer. Specifically, from Amazon’s general search results page,
14 consumers can click on a particular product of interest and then are directed to a separate page for that
15 product. Many suppliers—including both Amazon and third-party suppliers—provide the same
16 products on Amazon and all of these suppliers share the same individual product page. Amazon pushes
17 consumers to particular suppliers through a “Buy Box” at the top right corner of the product page. The
18 Buy Box includes “Add to Cart” and “Buy Now” buttons for the supplier Amazon has chosen.²⁰⁶ Only
19 one supplier controls the Buy Box at any given point in time, and when users click the “Add to Cart”
20

21 ²⁰³ See Amazon, *Selling Policies and Seller Code of Conduct*, <https://sellercentral.amazon.com/gp/help/external/help.html?itemID=G1801> (last visited July 1, 2021); Amazon, *Buyer-Seller*
22 *Messaging Service Overview*, [https://sellercentral.amazon.com/gp/help/external/help.html?](https://sellercentral.amazon.com/gp/help/external/help.html?itemID=202125900)
23 *itemID=202125900* (last visited July 1, 2021). Amazon also requires that its third-party suppliers
24 release it and agree to indemnify, defend, and hold it harmless against any claim, loss, damage,
settlement, cost, expense, or other liability arising from, *inter alia*, sales of the suppliers’ products.
See Amazon Services Business Solutions Agreement, *supra* note 193, at 6.1.

25 ²⁰⁴ Janger & Twerski, *The Heavy Hand of Amazon: A Seller Not a Neutral Platform*, 14 BROOKLYN J.
26 CORP., FIN & COMM. LAW 259 (Oct. 2019), [https://brooklynworks.brooklaw.edu/bjcfcl/vol14/](https://brooklynworks.brooklaw.edu/bjcfcl/vol14/iss2/3/)
iss2/3/.

27 ²⁰⁵ *Id.* at 264-65.

28 ²⁰⁶ *Id.* at 268.

1 or “Buy Now” button, they are buying from that Amazon-selected supplier.²⁰⁷ Over 90 percent of sales
 2 on Amazon occur using the Buy Box.²⁰⁸

3 113. Amazon allocates shares of the Buy Box such that the chosen supplier can change
 4 throughout the day. Thus, a consumer who clicks “Add to Cart” for a particular product at 6:00 a.m.
 5 may be purchasing a product supplied by Supplier X, while a consumer who clicks the same button
 6 for the same product at 6:30 a.m. may be purchasing a product from Supplier Y, or a product supplied
 7 by Amazon itself.²⁰⁹ Thus, not only does Amazon control which supplied products will win
 8 transactions, and how many transactions Amazon itself will supply, Amazon allocates these shares
 9 down to the minute.

10 114. Text at the bottom of the “Buy Box” gives consumers some information as to who the
 11 supplier may be. The text generally states either “(1) sold by [name of third party] and shipped by
 12 [name of third party]; (2) sold by [name of third party] and fulfilled by Amazon; or (3) sold and shipped
 13 by Amazon.” But the reality is that Amazon substitutes freely between suppliers after the sale.²¹⁰ As
 14 noted above, most third-party-supplied products are “Fulfilled by Amazon” or “FBA.” By default,
 15 Amazon warehouses FBA products by product type, not by supplier. Unless a supplier opts out of this
 16 program, and Amazon makes it disadvantageous to do so, all products of the same type are
 17 “commingled.”²¹¹ Accordingly, when a consumer purchases, for example, Clorox Disinfecting Wipes
 18 from Amazon, Amazon will generally fulfill this order from its commingled stock of Clorox
 19 Disinfecting Wipes regardless of what “supplier” was identified at the time of sale. The actual product
 20 the consumer receives could thus be one supplied by *any* third-party supplier, *or* by Amazon itself.
 21 And again, Amazon chooses whose product the consumer will receive without any input from the
 22 consumer or third-party suppliers involved.

23
 24 ²⁰⁷ See Leanna Zeibak, *How to Win the Amazon Buy Box in 2021*, TINUITI (Mar. 25, 2020),
 25 <https://tinuiti.com/blog/amazon/win-amazon-buy-box/>.

26 ²⁰⁸ *Id.*

27 ²⁰⁹ Janger & Twerski, *supra* note 204, at 270.

28 ²¹⁰ *Id.* at 269.

²¹¹ *Id.*

115. For all of the foregoing reasons, Amazon functions as the “seller” of all third-party-supplied products on its platform. At an absolute minimum, Amazon facilitates these sales. Not only does Amazon control pricing—either by fixing the price point or price ceiling—Amazon interacts directly with customers to execute transactions, promotes particular third-party-supplied products, and often fulfills orders from a commingled stock. Amazon controls the entire shopping experience on its platform, regardless of who supplies the products sold. Amazon is responsible when it sells third-party-supplied products at prices that exceed legal prohibitions on price gouging. Nothing is sold on Amazon, at any price, without Amazon’s active participation and facilitation.

116. Amazon cannot deflect blame on third parties for a separate but related reason—Amazon knew third-party suppliers would increase prices by unconscionable amounts during the pandemic, and knowingly allowed it to happen.

117. As Amazon is aware, third-party suppliers have previously inflated prices to unlawfully capitalize on emergencies, most prominently during Hurricane Irma in 2017.²¹² Moreover, wherever COVID-19 spread, it led to scarcity of essential consumer items and substantial price inflation. Amazon was on notice that the same dynamic would play out in the United States once the virus reached its shores, or even sooner.

118. Price inflation on third-party-supplied products was not only foreseeable; Amazon *knew* that it was occurring in real time and has claimed to have longstanding rules and systems to prevent and stop price gouging as a violation of its “fair pricing” policies (those claims, as shown in this Second Amended Complaint, have been proven false). Amazon assiduously tracks pricing on its platform to best position itself in the marketplace. Amazon thus knew that prices on third-party-priced products were exceeding legal thresholds, often by unconscionable amounts. Amazon had an obligation to prevent this from occurring, and to stop it once it occurred, which Amazon could readily

²¹² See Jennifer Calfas, *Amazon Is Removing \$100 Packs of Water After Being Accused of Hurricane Irma Price Gouging*, MONEY (Sept. 7, 2017), <https://money.com/amazon-bottled-water-price-gouging-hurricane-irma-florida/>.

do by capping prices or, where necessary, excising offending third-party suppliers. Amazon retains contractual authority to take these very steps.²¹³

119. Amazon did not act, however, until late February 2020, when it first began to suspend and take down some (but not close to all) products priced excessively by third parties.²¹⁴ Moreover, while Amazon's actions made for good publicity, they did not effectively address—much less eliminate—the problem. Amazon continued to sell third-party priced products at unconscionably inflated prices, as the examples cited in this Second Amended Complaint demonstrate. Notably in this regard, after Amazon took its limited initial steps to address price gouging by third-party suppliers, Senator Markey commented on Amazon's claim that it was addressing price gouging, writing on March 4, 2020, that despite Amazon's purported efforts, there had been “continued reports of price gouging” on the platform.²¹⁵

120. As public outcry swelled, Amazon was compelled on March 23, 2020, to suspend 3,900 United States accounts associated with products Amazon offered at excessive prices.²¹⁶ On that same date, Amazon issued a blog post stating that it has “zero tolerance for price gouging” and claimed to have had “longstanding policies and systems to prevent this harmful practice.”²¹⁷ But those assertions already had been proven false with the gouging ramping up and ongoing for months. And Amazon's actions, even at that point, were again inadequate. Just two days later, 33 attorneys general, including

²¹³ See Amazon Marketplace Fair Pricing Policy, *supra* note 188.

²¹⁴ See Annie Palmer, *Amazon cracks down on coronavirus price gouging and products making false claims*, CNBC (Feb. 27, 2020), <https://www.cnbc.com/2020/02/27/amazon-cracks-down-on-coronavirus-price-gouging-false-claims.html>.

²¹⁵ See Markey, *supra* note 116.

²¹⁶ See Josh Rivera, *Amazon removes more than 3,900 seller accounts from US store due to 'coronavirus-based price gouging'*, USA TODAY (updated Mar. 24, 2020), <https://www.usatoday.com/story/money/2020/03/23/coronavirus-amazon-price-gouging-removed-accounts/2904729001/>. In a letter to shareholders published on April 16, 2020, Amazon CEO Jeff Bezos indicated that Amazon had suspended “more than 6,000 selling accounts globally.” Amazon Annual Report, Ex. 99.1 (2020), available at <https://www.sec.gov/Archives/edgar/data/1018724/000119312520108427/d902615dex991.htm>. The letter did not specify how many of these accounts were operating in the United States, or whether that number is any greater than the 3,900 United States accounts suspended previously.

²¹⁷ See Amazon, “Price gouging has no place in our stores,” *supra* note 1.

1 Washington Attorney General Bob Ferguson, advised Amazon the “new protections” implemented by
 2 Amazon had “failed to remove unconscionably priced critical supplies during the COVID-19
 3 pandemic.”²¹⁸

4 121. Amazon should have had adequate systems in place long before COVID-19 reached
 5 the United States to monitor and eliminate price gouging on its platform. As 33 attorneys general have
 6 advised, Amazon should not simply react to third-party price inflation—it should have policies to
 7 “prevent unconscionable price increases from occurring in the first place.”²¹⁹ Amazon has the
 8 technology and sophistication to do this. In a May 13, 2020 blog post, Amazon acknowledged that it
 9 maintains “dynamic automated technology to proactively seek out and pull down unreasonably priced
 10 offers.”²²⁰ Amazon did not, however, deploy this system proactively to prevent unlawful price
 11 increases.

12 122. Ultimately, the most troubling aspect of Amazon’s “efforts” to address third-party price
 13 gouging is not that they came late, or were ineffectual, or that Amazon profited on these sales, all of
 14 which is true; **it is that while Amazon actively publicized these efforts, Amazon itself continued**
 15 **to inflate prices on its own inventory of products in amounts that satisfy any definition of “price**
 16 **gouging.”**

17 123. Amazon also cannot attribute the price increases on its platform—on either goods
 18 supplied by third parties or Amazon itself—to increased costs. Putting aside that third parties’ costs
 19 are not borne by Amazon, the price increases at issue, often topping 1000 percent, exceed any plausible
 20 cost increase in supplying the price-gouged goods. With prices escalating on its platform, Amazon’s
 21 overall profits—accounting for any cost increases—skyrocketed during the pandemic, jumping 220
 22 percent in the first three month of 2021 over the year prior.²²¹ In fact, the “high volume of orders during

23
 24 ²¹⁸ See Letter from 33 state attorneys general, *supra* note 124.

25 ²¹⁹ See *id.*

26 ²²⁰ See Brian Huseman, Amazon Vice President of Public Policy, *It’s time for Congress to establish*
 27 *a federal price gouging law* (May 13, 2020), [https://blog.aboutamazon.com/policy/its-time-for-](https://blog.aboutamazon.com/policy/its-time-for-congress-to-establish-a-federal-price-gouging-law)
 28 [congress-to-establish-a-federal-price-gouging-law](https://blog.aboutamazon.com/policy/its-time-for-congress-to-establish-a-federal-price-gouging-law).

²²¹ See Karen Weise, NYT, *Amazon’s profit soars 2020 percent as pandemic drives shopping online*
 (April 29, 2021), <https://www.nytimes.com/2021/04/29/technology/amazons-profits-triple.html>.

the pandemic [] let Amazon operate more efficiently.”²²² As analysts have observed, Amazon was able to run its warehouses “closer to full capacity” such that while the number of products sold by Amazon increased 44 percent during the first year of the pandemic, its “cost to fulfill those orders was up only 31 percent.”²²³

G. End of Emergency Lockdowns

124. In the fall of October 2022 Washington and other states began to end their COVID-19-related State of Emergency Orders. In May 2023, the Federal Public Health Emergency Order related to Covid-19 expired.

H. Amazon Price-Gouged Its Way to Unprecedented Revenues During the COVID-19 Crisis

125. With rampant price gouging, Amazon has exploited unprecedented consumer demand during the COVID-19 pandemic to reap extraordinary profits. Amazon’s 2020 first-quarter net sales reached \$75.5 billion, up 26 percent from the first quarter of 2019.²²⁴ This means that through the first quarter Amazon had generated \$10,000 every second of every day in 2020. Amazon continued to profit throughout the pandemic. Its 2020 revenues were up 38%, an increase of more than \$100 billion, and its net profits spiked a remarkable 84%.²²⁵

126. Despite the stock market’s collapse in early 2020, there was never a better time to be an Amazon shareholder. As one leading analyst stated in April 2020:

[Amazon] has achieved a feat that many investors on Wall Street would regard as impossible in a stock market that’s fallen sharply off its highs this year. Amazon’s shares have soared more than 40% in the past month alone to a new record high as of early afternoon trading on

²²² *Id.*

²²³ *Id.*

²²⁴ See Amazon, Press Release, *Amazon.com Announces First Quarter Results* (Apr. 30, 2020), https://s2.q4cdn.com/299287126/files/doc_financials/2020/Q1/Amazon-Q1-2020-Earnings-Release.pdf.

²²⁵ See Shelley E. Kohan, *Amazon’s Net Profit Soars 84% With Sales Hitting \$386 Billion*, FORBES (Feb. 2, 2021), <https://www.forbes.com/sites/shelleykohan/2021/02/02/amazons-net-profit-soars-84-with-sales-hitting-386-billion/?sh=51d2e1b71334>.

Thursday, giving the company a market value of more than \$1.2 trillion.²²⁶

127. Jeff Bezos, Amazon’s president and CEO, has seen his personal fortune swell during the COVID-19 pandemic. Among other assets, Mr. Bezos owns approximately an 11.2 percent stake in Amazon. On April 14, 2020 alone, when Amazon stock surged more than 5 percent, Mr. Bezos’s fortune grew by some \$6.3 billion. Overall, Jeff Bezos’s personal wealth increased by \$75 billion (or approximately \$205 million per day) as the pandemic raged throughout 2020.²²⁷

V. CHOICE OF LAW ALLEGATIONS

128. There is no actual conflict between Washington law and the laws of the states in which Plaintiffs reside—namely, California, Arizona, and North Carolina—on the claims alleged herein. Price gouging is unlawful under statutes, and/or the common law, in each of these states.

129. Accordingly, Washington law can apply to Plaintiffs’ claims by virtue of a Washington choice-of-law provision that is set forth in “conditions of use” that appear on Amazon’s website. These conditions of use are available to consumers when they sign up for an Amazon account and make subsequent purchases. In pertinent part, the choice-of-law clause contained in the conditions of use provides:

By using any Amazon Service, you agree that applicable federal law, and the laws of the state of Washington, without regard to principles of conflict of laws, will govern these Conditions of Use and any dispute of any sort that might arise between you and Amazon.

VI. CLASS ACTION ALLEGATIONS

130. Plaintiffs bring this proposed action on behalf of themselves and, pursuant to Rules 23(a), 23(b)(2) & 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of the following class (collectively, the “Class”):

All persons who purchased any consumer good or food item, including any listed on Appendix A, on Amazon.com between January 31, 2020 and October 20, 2022 whose price was set at an unfair level. The

²²⁶ See Nathan Reiff, *Amazon Earnings: What Happened*, INVESTOPEDIA (updated July 30, 2020), <https://www.investopedia.com/amazon-earnings-4692665>.

²²⁷ See Taylor, *supra* note 4.

1 precise identification of unfair prices and when they were in place will
2 be refined after discovery and expert analysis.

3 131. This class definition is conservative because, by the time of the HHS' January 31, 2020
4 emergency declaration, prices were already on the rise. Amazon was also aware long before January
5 31, 2020, that consumers were turning to online retail to safely obtain the consumer goods they
6 required.

7 132. Plaintiffs reserve the right to revisit the Class definition as to the products in the Class
8 based upon information learned through discovery.

9 133. Excluded from this proposed Class are Defendant; Defendant's affiliates and
10 subsidiaries; Defendant's current or former employees, officers, directors, agents, and representatives;
11 and the district judge or magistrate judge to whom this case is assigned, as well as those judges'
12 immediate family members.

13 134. This action may appropriately proceed as a class action because Plaintiffs seek
14 injunctive relief that will apply to the Class as a whole and, further, because Plaintiffs will prove the
15 elements of their damages claims with predominantly common evidence.

16 135. **Numerosity:** The proposed Class includes thousands (and potentially millions) of
17 consumers who paid unlawfully inflated prices for products on Amazon.com. The members of this
18 Class are so numerous that individual joinder of all class members is impracticable. The precise number
19 of class members is not available to Plaintiffs at this time, but the number and identity of individual
20 class members can be ascertained from Amazon's books and records.

21 136. **Commonality and Predominance:** Numerous questions of law and fact are common
22 to the claims of the Plaintiffs and members of the proposed Class, and these common questions
23 predominate over any questions affecting only individual class members. These include, but are not
24 limited to:

- 25 (a) Whether Amazon inflated prices during the COVID-19 pandemic;
26 (b) Whether those price increases were "unfair" under the WCPA;
27 (c) Whether Amazon unlawfully increased prices on its own inventory of products;
28

- (d) Whether Amazon is liable for price increases on products supplied by third-parties;
- (e) Whether Amazon exercised reasonable care to monitor and prevent price inflation by third-party Amazon suppliers;
- (f) Whether and the extent to which consumers were harmed by unlawful price increases on Amazon, and the extent of their damages;
- (g) The extent to which Amazon was enriched unjustly;
- (h) Whether Amazon should be subjected to punitive damages, and the appropriate amount; and
- (i) Whether Plaintiffs are entitled to injunctive relief and the appropriate scope of any equitable decree.

137. **Typicality:** Plaintiffs' claims are typical of the claims of all class members because, among other things, all class members were comparably and similarly injured by Amazon's wrongful conduct alleged herein. Plaintiffs, like all class members, purchased products from Amazon at prices that were unlawfully inflated during the COVID-19 pandemic.

138. **Adequacy:** Plaintiffs will represent and protect the interests of the proposed Class adequately and fairly. Plaintiffs have retained counsel competent and experienced in complex class-action litigation. Plaintiffs have no interests that are antagonistic to those of the proposed Class, and their interests do not conflict with the interests of the proposed class members they seek to represent.

139. **Injunctive and declaratory relief:** By way of the conduct described in this Second Amended Class Action Complaint, Defendant has acted on grounds that apply generally to the proposed Class. Accordingly, final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

140. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in its management. Even if members of the proposed Class could sustain individual litigation, that course would not be preferable to a class action because individual litigation would increase the delay and expense to the parties due to the complex factual and legal controversies present in this matter. Here,

the class-action device will present far fewer management difficulties, and it will provide the benefit of a single adjudication, economies of scale, and comprehensive supervision by this Court. Further, uniformity of decisions will be ensured.

VII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

VIOLATION OF WASHINGTON CONSUMER PROTECTION ACT (“WCPA”) (WASH. REV. CODE § 19.86)

141. Plaintiffs repeat and re-make every allegation above as if set forth herein in full.

142. The WCPA renders unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Wash. Rev. Code § 19.86.020.

143. Although the WCPA does not define what constitutes an “unfair” act or practice, the prohibition must “be liberally construed” to ensure “that its beneficial purposes may be served.” *Id.*

144. The conduct of Amazon described above is “in violation of the public interest,” and as such violates the WCPA.

145. The conduct of Amazon described above offended public policy or is immoral, unethical, oppressive or unscrupulous and therefore violates the WCPA.

146. Interpretation of the WCPA is informed, but not confined “by final decisions of the federal courts and final orders of the federal trade commission interpreting the various federal statutes dealing with the same or similar matters.” *Id.* Section 5(a) of the Federal Trade Commission Act (FTC Act) (15 U.S.C. § 45) likewise prohibits “[u]nfair or deceptive acts or practices in or affecting commerce.” An act or practice may be deemed unfair under the FTC Act if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.” 15 U.S.C.A. § 45(n). Amazon’s conduct also violates this test as well.

147. A nationwide emergency related to COVID-19 was first declared by the HHS on January 31, 2020, and a national emergency existed by executive through May 11, 2023.²²⁸ This

²²⁸ See HHS, *supra* note 5. On March 13, 2020, President Trump followed the Health and Human Services Division by declaring a national emergency (effective March 1, 2020) pursuant to the

1 Second Amended Complaint’s January 31, 2020, cut-off date for price-gouging is conservative
 2 because public alarm and retail hoarding were occurring prior to the January 31, 2020 emergency
 3 declaration. Amazon knew no later than January 31, 2020 (and likely far earlier) that there was
 4 increased demand for online retail, and its services in particular. Amazon had a responsibility not to
 5 gouge consumers who turned to online retail increasingly as a means of obtaining essential goods
 6 safely during an escalating and alarming public health crisis.

7 148. Increasing prices excessively during a pandemic offends basic public policy and also is
 8 unethical, oppressive, and unscrupulous, and thus “unfair” for purposes of the WCPA. Indeed, it is
 9 difficult to imagine an act more unscrupulous than profiteering off a pandemic. As the Washington
 10 Attorney General stated when imploring Amazon to address price-gouging on its platform, “[a]s
 11 COVID-19 spreads throughout the country, it is important unscrupulous sellers do not take advantage
 12 of Americans by selling products at unconscionable prices.”²²⁹

13 149. Under the FTC Act framework, the price increases on the items listed in Appendix A
 14 are unfair because they cause substantial consumer injury, particularly where, as here, the increases
 15 were widespread, affecting potentially millions of consumers across the country and greatly affecting
 16 the public interest. Consumers lacked reasonable means to avoid their injuries, as the exorbitant prices
 17 they paid attest. And as detailed above, Plaintiffs looked elsewhere for the products they purchased, or
 18 alternatives, and found none.

19 150. There are no countervailing consumer or competition benefits to price gouging. The
 20 only party that benefitted here was Amazon, which has reaped blockbuster profits by charging
 21 excessive prices throughout the pandemic. These were illicit profits, earned only by exploiting
 22

23 National Emergencies’ Act. *See* 85 Fed. Reg. 15,337 (2020),
 24 <https://www.federalregister.gov/documents/2020/03/18/2020-05794/declaring-a-national-emergency-concerning-the-novel-coronavirus-disease-covid-19-outbreak>. On February 24, 2021,
 25 President Biden extended the national emergency declaration for another year. *See* Pres. Joseph R.
 26 Biden, Jr., Letter to U.S. Congress (Feb. 24, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/24/a-letter-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/>.

27 ²²⁹ *See* <https://oag.dc.gov/sites/default/files/2020-03/Price-Gouging-Multistate-Letter-Amazon.pdf>
 28 (last visited Oct. 21, 2021).

1 consumers who have been forced to rely on Amazon to obtain essential goods during this
2 unprecedented public health crisis. Consumers do not “benefit” when they are forced to overpay for
3 the goods they need to remain safe and healthy.

4 151. On information and belief, Amazon’s price increases were not directly attributable to
5 additional costs imposed on Amazon by suppliers, and Amazon increased prices on many products in
6 excessive and unfair amounts even when accounting for any additional costs and the markup Amazon
7 customarily applies to such products.

8 152. Amazon sells, and facilitates the sale of, all products available on Amazon.com. Thus,
9 Amazon is liable under the WCPA for all unlawful prices on its platform. This includes sales involving
10 Amazon’s own inventory of products. It also includes sales involving products supplied by third
11 parties. Consumers purchasing third-party-supplied products interact almost exclusively with Amazon,
12 which, functioning as the seller, controls virtually all aspects of the transaction, including by
13 establishing a price ceiling, in many cases setting the specific selling price below that ceiling, and
14 maintaining final authority to remove any product listing. Amazon promotes third-party-supplied
15 products on its platform, including by offering them for sale through its “Buy Box,” and otherwise
16 choosing to rank, curate, and give prominence to the sale of specific products. Amazon asserts effective
17 control over which supplied products will win transactions and how many products Amazon itself will
18 supply, and allocates these shares down to the minute. Amazon accepts payment when third-party-
19 supplied products are purchased and handles all material aspects of the transaction. As with any seller,
20 Amazon profits when it sells third-party-supplied products, collecting per-transaction and other fees.
21 And because Amazon’s fees are tied to the purchase price, Amazon profits directly when third-party
22 products are sold at higher prices.

23 153. For all of these reasons, and as elaborated further herein, Amazon causes and is
24 responsible for all price-gouging on its platform, including sales (or sales offers) involving third-party-
25 supplied products.

26 154. As a direct and proximate result of Amazon’s unfair business acts and practices,
27 Plaintiffs are entitled to injunctive relief and actual damages, trebled to the extent permitted under
28

1 Wash. Rev. Code § 19.86.090. Plaintiffs are also entitled to the cost of suit, including reasonable
2 attorney's fees.

3 **SECOND CAUSE OF ACTION**

4 **NEGLIGENCE**

5 155. Plaintiffs repeat and re-make every allegation above as if set forth herein in full.

6 156. Amazon has a non-delegable duty to apply a level of reasonable care commensurate
7 with the foreseeable harms arising from its control, maintenance, and management of the largest online
8 retail platform in the world. This encompasses a duty to ensure that, during a declared public
9 emergency, consumer goods or food items are not sold on the platform at excessive prices.

10 157. As the COVID-19 crisis emerged in January 2020, and even prior, it was foreseeable
11 that third-party suppliers on Amazon would attempt to inflate prices excessively for many goods
12 essential to enduring and combatting the public health crisis. Such price inflation has occurred on
13 Amazon's platform in prior emergencies, and was occurring wherever COVID-19 spread. Amazon
14 knew it would occur in response to COVID-19.

15 158. Amazon has the ability, technological capacity, and contractual right to prevent price
16 gouging during a declared emergency. Amazon maintains complete control over its platform. It has
17 oversight on the prices of all products sold on the platform and, by contract with its third-party
18 suppliers, may unilaterally remove or suspend any listing priced excessively.

19 159. Amazon, its agents, servants, and/or employees, failed to exercise ordinary care and
20 failed to comply with existing standards of care in the following acts and/or omissions:

- 21 • Failing to maintain and/or implement systems to detect and cap price increases
- 22 by third-party suppliers;
- 23 • Listing products with excessive price increases during the COVID-19
- 24 pandemic;
- 25 • Failing to adequately investigate reports of excessive price inflation on third-
- 26 party-supplied products; and
- 27 • Facilitating the listing, sale, and delivery of products priced at excessive levels
- 28 on its platform.

1 160. Given the foreseeability of price gouging during the COVID-19 pandemic, a reasonable
 2 online retailer in Amazon's position would have had systems in place to prevent price gouging from
 3 ever occurring, and would have taken prompt, aggressive steps to stamp it out entirely. Amazon did
 4 not do so. Despite Amazon's vast resources and sophistication, it lacked or failed to implement systems
 5 to prevent unlawful price increases on third-party-supplied products, and the acts Amazon ultimately
 6 did take to address price gouging came far too late, and were ineffectual.

7 161. Amazon knew that, because of its failure to exercise reasonable care, consumers such
 8 as Plaintiffs would be overcharged.

9 162. Amazon's negligence was the proximate cause and substantial factor in causing
 10 Plaintiffs' economic loss. Had Amazon exercised reasonable care, Plaintiffs would not have paid
 11 excessive amounts for products they purchased from Amazon. Plaintiffs are entitled to compensatory
 12 and equitable damages and declaratory relief in an amount to be proven at trial.

13 **THIRD CAUSE OF ACTION**

14 **UNJUST ENRICHMENT**

15 163. Plaintiffs repeat and re-make every allegation above as if set forth herein in full.

16 164. Amazon has exploited vulnerable consumers by selling, and offering for sale, products
 17 at excessive prices during COVID-19 pandemic. Facing retail scarcity and official warnings as to the
 18 risks of public interaction, consumers have turned to Amazon as a lifeline to obtain goods vital to their
 19 safety, health, and well-being. Basic principles of equity, justice, and fair dealing, prohibit sellers from
 20 capitalizing on such exigencies to charge consumers excessive prices.

21 165. By selling consumer goods and food items at excessive and inflated prices during the
 22 COVID-19 pandemic, Amazon was unjustly enriched. Amazon profited on both the sale of its own
 23 inventory as well as products supplied by third parties, for which Amazon retains a portion of the
 24 transaction proceeds. All of these inflated profits were conferred by Plaintiffs and the class they seek
 25 to represent, and retained unjustly by Amazon.

26 166. In selling goods at excessive prices during a public health crisis, Amazon knew that it
 27 was overcharging consumers, that consumers would be harmed, and that by retaining the sale proceeds
 28 Amazon would be unjustly enriched.

167. Amazon has no contractual or other right to charge Plaintiffs' or the proposed class the excessive prices identified in this Second Amended Complaint. Any contract purporting to authorize Amazon's price gouging, as herein alleged, would be unenforceable and void.

168. In the event Plaintiffs lack an adequate remedy at law, Amazon is required to make restitution in equity pursuant to the common law of unjust enrichment.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief on their own behalf and on behalf of all those similarly situated:

A. That the Court certify the proposed Class and appoint Plaintiffs as Class representatives and their counsel as Class counsel;

B. That the Court award them and the proposed Class all appropriate relief, to include, but not be limited to, treble damages, restitution, and injunctive relief prohibiting Amazon from forever engaging in the wrongful conduct alleged herein, which has harmed Plaintiffs, the Class, and the public at large;

C. That the Court grant such additional orders or judgments as may be necessary to remedy or prevent the unlawful practices complained of herein;

D. That the Court award them and the proposed Class reasonable attorneys' fees, costs, and pre- and post-judgment interest;

E. That the Court impose punitive damages; and

F. That the Court award them and the proposed Class such other, favorable relief as may be available and appropriate under federal or state law, or at equity.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all issues so triable.

1 DATED: September 20, 2024

Respectfully submitted,

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13 *Attorneys for Plaintiffs and the Proposed Class*

APPENDIX A

**PRODUCTS IN THE CLASS BEFORE
FURTHER DISCOVERY AND EXPERT ANALYSIS**

- 3M Full Facepiece Reusable Respirator 6700
- Almond Milk
- Baking Soda, including Arm & Hammer Pure Baking Soda
- Barilla Pasta, Spaghetti
- Better Than Bouillon Organic Chicken Base
- Black Beans, including Faraon Black Beans, Goya Black Beans Dry 14 oz.
- Bleach, including Clorox Concentrated Germicidal Bleach
- Bottled water, including Ice Mountain 199% Natural Spring Water and Smartwater distilled water
- Chef Boyardee, Spaghetti & Meatballs
- Cold Remedies, including Cold-EEZE Cold Remedy Lozenges Honey Lemon
- Cottonelle Flushable Wet Wipes
- Curad Alcohol Prep Pads
- Disinfectant Wipes, including CaviWipes, Clorox Commercial Solutions Disinfecting Wipes, Clorox Hydrogen Peroxide Disinfecting Wipes, and Lysol Disinfecting Wipes
- Disposable Gloves, including Raven Powder-Free Disposable Black Nitrile 6 Mi. Gloves
- Dynarex Alcohol Prep Pad
- Dynarex Corporation Surgical Procedure Masks
- Elder Berry Whole, dried 1lb
- Face Masks, including Disposable 3-Layer Masks, and Disposable Earloop Face Masks
- Flour, including King Arthur Flour
- Germ Guardian Pluggable Air Purifier & Sanitizer
- GoYoga Yoga Mat
- Hibiclens Antibacterial / Antiseptic Skin Cleanser
- Ivermectin
- KIND Bars, Dark Chocolate Nuts & Sea Salt

- 1 • Kirkland Signature Dried Cherries, 20 Ounce
- 2 • Kraft Easy Mac Microwavable Macaroni and Cheese
- 3 • Kraft Macaroni & Cheese
- 4 • Logitech HD Pro Webcam C920
- 5 • Marachan Beef Ramen Noodles
- 6 • Medline Iodine Pads
- 7 • Meyenberg Whole Powdered Goat Milk
- 8 • North 760008A Silicone Full Facepiece Respirators – Face Piece Only
- 9 • Pain Relievers, including Advil Coated Tablets Pain Reliever and Fever Reducer, Aleve
- 10 Arthritis Cap Pain Relief, Aleve Back & Muscle Pain Tablets, and Kirkland Signature Ibuprofen Liquid Softgels
- 11 • Paper Towels, including Bounty Select-A-Size Paper Towels
- 12 • Planters Salted Peanuts (48 Pack)
- 13 • Rice, including Asian Best Jasmine Rice, RiceSelect Jasmati Rice, and Nishiki Medium Grain Rice
- 14 • Spectrum Essential Organic Ground Flaxseed
- 15 • StarKist Chunk Light Tuna in Water
- 16 • Tide PODS Free and Gentle Laundry Detergent
- 17 • Toilet Paper, including Quilted Northern Ultra Plush Toilet Paper 18 Rolls
- 18 • Vegetable Glycerin, including NOW Solutions Vegetable Glycerin
- 19 • Yeast, including Red Star Active Dry Yeast
- 20 • Zodiac Flea & Tick Spray
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